1. August 18, 2020 Agenda
   Documents:
   
   20200818- AMENDED.PDF

1.I. August 18, 2020 Workbook
   Documents:
   
   08-18-2020 WORKBOOK.PDF
MIDDLETOWN CITY COUNCIL AGENDA
TUESDAY, August 18, 2020

CITY COUNCIL BUSINESS MEETING – 5:30 PM – COUNCIL CHAMBERS – LOWER LEVEL

MOMENT OF MEDITATION/PLEDGE OF ALLEGIANCE TO THE FLAG/ROLL CALL

CITIZEN COMMENTS

COUNCIL COMMENTS

CITY MANAGER REPORTS

CONSENT AGENDA. . . Matters listed under the Consent Agenda are considered to be routine and will be enacted by one motion and one vote of consent. There will be no separate discussion of these items. If discussion is desired, that item will be removed and considered separately.

(a) To Approve City Council minutes from June 2, June 16, July 7, 2020

(b) Receive and File Board and Commission Minutes from:
   Board of Zoning Appeals - January 9 and May 6, 2020
   Architecture Review Board – January 16, 2020
   Visitors Bureau- January 27, April 20, May 19, June 15 and July 20, 2020
   Historic Commission – May 7, 2020 & May 28, 2020
   Planning Commission – July 8, 2020

(c) To Approve the Final Record Plat for Sawyer’s Mill Section 3A

(d) To confirm the following promotional appointments in the Department of Public Safety, Division of Fire: Brian Patton to the position of Fire Lieutenant; Jamison Verdin to the position of Fire Captain; and Stephen Ludwig to the position of Fire Deputy Chief.

PINNING CEREMONY
Lieutenant Brian Patton
Captain Jamison Verdin
Deputy Chief Stephan Ludwig

MOTION AGENDA

(a) To approve the purchase of highway rock salt from Compass Minerals America Inc., of Overland Park, KS, in the amount of $55.81/ton for the approximate usage of 4,500 tons over the 2020-2021 winter season.

(b) To adopt the recommended Public Transportation Safety Agency Plan for Middletown Transit System.

(c) To authorize the transfer of property to adjacent property owners through the Vacant Side Lot Program.

<table>
<thead>
<tr>
<th>PARCEL NO.</th>
<th>ADDRESS</th>
<th>STREET</th>
<th>SALE PRICE</th>
<th>INTERSTED PARTY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q6542031000183</td>
<td>621</td>
<td>CRAWFORD ST</td>
<td>$973.25</td>
<td>Sager, Jodi and Jerry</td>
</tr>
<tr>
<td>Q6542031000074</td>
<td>626</td>
<td>CRAWFORD ST</td>
<td>$920.00</td>
<td>Mashburn, Stephanie</td>
</tr>
<tr>
<td>Q6521027000007</td>
<td>808</td>
<td>EIGHTH AVE</td>
<td>$500.00</td>
<td>Thompson, Danny and Tammy</td>
</tr>
<tr>
<td>Q6542119000016</td>
<td>3204</td>
<td>MORGAN ST</td>
<td>$1,020.00</td>
<td>Lovejoy, Tamara (Mann)</td>
</tr>
<tr>
<td>Q6542104000033</td>
<td>3001</td>
<td>NAVAHO ST</td>
<td>$1,160.00</td>
<td>Fields, Richard and Patricia</td>
</tr>
<tr>
<td>Q6542103000124</td>
<td>3229</td>
<td>NAVAHO ST</td>
<td>$500.00</td>
<td>Snelling, Kelly and Mary</td>
</tr>
</tbody>
</table>

It is the policy of the City of Middletown to make all public hearings and meetings accessible to all persons, in accordance with state and/or federal laws. If you have a disability which requires accommodation in order for you to attend and/or participate in this meeting, please contact us at 425-7831 at least forty-eight hours prior to the time of the meeting to advise us of the need for accommodation, and reasonable efforts shall be made to provide the same. This agenda may be accessed on the City of Middletown website @ http://www.cityofmiddletown.org.
MIDDLETOWN CITY COUNCIL AGENDA
TUESDAY, August 18, 2020

LEGISLATION

1. **Resolution No. R2020-24**, a resolution authorizing the City Manager to accept a grant and enter into a grant agreement for the 2020 COPS Hiring Program with the U.S. Department of Justice. (Second Reading)

2. **Ordinance No. O2020-39**, an ordinance authorizing a contract with The Great Lakes Construction Co. for repairs to the University Boulevard Bridge and declaring an emergency.

3. **Ordinance No. O2020-40**, an ordinance authorizing a contract with Norfolk Southern Railway Company related to the repairs to the University Boulevard Bridge and declaring an emergency.

4. **Ordinance No. O2020-41**, an ordinance amending Section 209.06 (Authority of the City Manager; Purchases) of the Codified Ordinances. (Second Reading)

5. **Ordinance No. O2020-42**, an ordinance establishing a procedure for and authorizing a contract with Miller Pipeline, LLC for the 2020 Sanitary Sewer Lining Project and declaring an emergency. (No action requested until September 1, 2020)

EXECUTIVE SESSION
Under the authority of O.R.C. 121.22 (G) (1) To consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official.
It is the policy of the City of Middletown to make all public hearings and meetings accessible to all persons, in accordance with state and/or federal laws. If you have a disability which requires accommodation in order for you to attend and/or participate in this meeting, please contact us at 425-7831 at least forty-eight hours prior to the time of the meeting to advise us of the need for accommodation, and reasonable efforts shall be made to provide the same. This agenda may be accessed on the City of Middletown website @ http://www.cityofmiddletown.org.
It is the policy of the City of Middletown to make all public hearings and meetings accessible to all persons, in accordance with state and/or federal laws. If you have a disability which requires accommodation in order for you to attend and/or participate in this meeting, please contact us at 425-7831 at least forty-eight hours prior to the time of the meeting to advise us of the need for accommodation, and reasonable efforts shall be made to provide the same. This agenda may be accessed on the City of Middletown website @ http://www.cityofmiddletown.org.

LEGISLATION

1. Resolution No. R2020-24, a resolution authorizing the City Manager to accept a grant and enter into a grant agreement for the 2020 COPS Hiring Program with the U.S. Department of Justice. (Second Reading)

2. Ordinance No. O2020-39, an ordinance authorizing a contract with The Great Lakes Construction Co. for repairs to the University Boulevard Bridge and declaring an emergency.

3. Ordinance No. O2020-40, an ordinance authorizing a contract with Norfolk Southern Railway Company related to the repairs to the University Boulevard Bridge and declaring an emergency.

4. Ordinance No. O2020-41, an ordinance amending Section 209.06 (Authority of the City Manager; Purchases) of the Codified Ordinances. (Second Reading)

5. Ordinance No. O2020-42, an ordinance establishing a procedure for and authorizing a contract with Miller Pipeline, LLC for the 2020 Sanitary Sewer Lining Project and declaring an emergency. (No action requested until September 1, 2020)

EXECUTIVE SESSION

Under the authority of O.R.C. 121.22 (G) (1) To consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official.
CITIZEN
COMMENTS
COUNCIL COMMENTS
CITY MANAGER REPORTS
At 5:30 p.m., Mayor Condrey called the City Council meeting to order in Council Chambers, Lower Level of the City Building.


Chief Birk presented the Ron VanArsdale Citizen Service Award to Krystal Marsh. Ms. Marsh is the pharmacist at CVS Pharmacy at 820 S. Breiel Boulevard. On May 2, 2020 there was an armed robbery at the pharmacy. Inventory at CVS was conducted and it was found that a total of 8,146 pills were taken, being various strengths of Oxycodone and Hydrocodone, with a total value of more than $11,000. The suspects had used a gun and zip tied the employees, robbing them of prescription medication. Ms. Marsh was honored for her actions during and after the robbery. She remained calm and was able to provide the Police Department important details which enabled the Police to apprehend the subjects and recover the weapon used in the robbery and the stolen drugs.

Chief Birk reported that he and Officer Earl Nelson met with Reverend Bailey, Reverend Monroe and NAACP representative William Ford, to discuss things in Middletown. They are working together to organize a peaceful United March on June 20, 2020; we are all in this together, one City, united as one. The group will be meeting quarterly to go over use of force policies, procedures and complaints. Chief Birk reported that the Police Department has been working on de-escalating training for about a year. He explained that the department takes complaints from anyone and all complaints are investigated. After the investigation is complete the report goes to Major Warrick and Chief Birk for review. He explained that any use of force is first reported to the supervisor on duty and immediately the subject receives medical evaluation and treatment before they are transported to the jail. Reports are completed by each officer that used force and the supervisor documents all evidence such as cruiser cameras, witness statements, and doorbell videos. The complete report is reviewed by Major Warrick and Chief Birk. Chief Birk described what would happen in Middletown if there was a situation like what happened in Minnesota. (George Floyd’s murder while in custody.) Anytime that there is an in-custody death situation, we contact the Bureau of Criminal Investigation and they handle the criminal investigation from the beginning until the end. The officers are immediately placed on administrative leave and Middletown conducts an internal investigation. While on administrative leave, officers are stripped of their badge, gun and access. All cases are presented to the Butler County Grand Jury. He is going to meet with William Ford, Reverend Bailey and Reverend Monroe on a regular basis and discuss things that they can do in the community. He stated that a small protest had taken place with no issues. He stated that the department had recently completed crowd control training. He stated that the department welcomes peaceful protests with open arms. If the protest is not peaceful, the department is also ready to respond to that situation and keep the community and the officers safe. He explained that permits are available through the Police Department or through the Public Works Department. He explained that the Citizen’s Advisory Board to the Police Department meets every other month. This public board reviews any citizens complaints, officer discipline and use of force reports. Chief Birk discusses new hires and promotions within the department and announces upcoming events and answers questions.

Clerk Schenck read the following comments submitted by email.

William Bray submitted the following comment. “It difficult to fathom that this Airport controversy is simply because the City is requiring skydivers to land several hundred yards to the west of their current landing zone, and indeed further away from an active runway. City Council has an obligation to consider the interests of all citizens of Middletown, and ensure that City assets are utilized to their optimal function. As I’ve gathered the facts of this matter, it is clear to me that Start Skydiving wants to monopolize the City airport as its own private playground and recreational center, and any reasonable attempt by the City to carve out room for other Airport users is vehemently opposed by Start Skydiving and its stakeholders, purely out of self-interest. As I viewed the City Council meeting of May 19th I noted that many of the speakers’ comments in that coordinated campaign were around the topic of safety, and how it is a priority to the users of Start Skydiving. Few of them seemed to be residents of Middletown. Generally speaking, let us dispense with the absurd notion that safety is the top priority for skydivers. Indeed, the entire point of skydiving is to get a thrill and adrenaline rush from the controlled danger of jumping out of an airplane. If safety were their top priority, skydivers could instead engage in other diversions like checkers, pinochle, or golf. In the more specific case of Start Skydiving, it is apparent that they have racked up an abysmal safety record over the past decade of operations at Hook Field, which makes all the commentary about safety concerns rather hypocritical, and reveal them to be a diversionary smokescreen. One of the commentators had scoured FAA records going back several decades and was able to find just a few instances of mid-air, aircraft-skydiver collisions. But notably absent from his comments was the fact that, as reported by various news organizations, there have been two fatalities right here in Middletown at Start Skydiving within the past 6 years, and a third fatality earlier this year in Florida by a member of the Middletown-based skydiving team. These deaths are in addition to some unknown number of near-misses and serious accidents, at least one of which apparently
Mister Moon commented on the week’s events and the tragic death of Mr. Floyd. He thanked the City Council for their service. He stated that since Covid 19 closed the Middletown High School, he has taken the chance to talk with students and their families about their ideas, interests, and relationships and we would be a better City for it.

Mr. Mulligan stated that he shared in the sadness and disappointment of the events in Minneapolis. Obviously, those actions don’t reflect the best of any Police Department. Those actions have opened up a very deep wound in America. I am hopeful and prayerful that Middletown can be part of the solution. It is about building trust across racial and economic divides. If we can do that in Middletown, it would be a great step forward to building friendships and relationships and we would be a better City for it.

Ms. Vitori stated that her heart was heavy from the events of the week. She introduced a resolution speaking out against injustice and systemic racism in our country for City Council to consider adopting at the next meeting. She read an excerpt from the sample resolution.

Candice Keller submitted the following comments. *Dear Esteemed Council Members, A situation has been brought to my attention regarding a local business in the City of Middletown, Start Skydiving. This issue pertains to the movement of this business’s original skydiving landing zones, and combining them into one undesirable landing location. I respectfully ask that the City reconsider, as this decision may have many undesirable consequences for Middletown. First and foremost, Start Skydiving brings in around $6-8 million yearly, making it a very crucial business for Middletown, as well as being an attractive tourist destination. In turn, this is beneficial to every local business in the city. The presence of the skydiving program also secures grant money for the Middletown airport. To enact the change in this business’s landing zones without further consideration would threaten economic harm to airport and the entire City of Middletown. The new landing location determined by the city also poses several safety risks for Start Skydiving. The business’s original three separate landing zones were set for different skydiving skill levels. Combining them all into one could prove dangerous. The more westward placement of the new landing zone also places the skydivers right in the path of downwind pattern landing aircraft. Further, the new landing location is less handicap accessible, putting in jeopardy the business’s tandem skydiving program for both civilian and veteran skydivers. Start Skydiving wishes to mitigate as much risk as possible, however the new landing zone makes this exceedingly difficult. I was also informed that the FAA was not involved in the city’s process for determining the new landing location. I find this most troublesome as they would be the greatest authority for evaluating the new landing zone’s safety. Excluding the FAA from this process is greatly concerning. In conclusion, I once again respectfully ask that the City of Middletown reconsider their decision. I am certain that a compromise can be made and suggest that a well-meaning dialogue be opened up between the city and Start Skydiving. This local business’s input should be well regarded, and also the FAA should be involved in determining the best landing zone locations. This is all for the best safety and economic interest of Middletown.*

The following comments were made in person.

Ray Miller, 4401 Brandon Lane, Middletown, Ohio, expressed his appreciation to the Mayor and City Council for their service. He stated that since Covid 19 closed the Middletown High School, Breiel Boulevard has become a drag strip. Cars and motorcycles are racing past his house and it is really dangerous. He asked for the City to put an officer up there or a sign to stop it.

Ruth Kelley, 711 Poplar Street, Middletown, Ohio, stated that she has been watching a lot of the protests that have been taking place all over the country and locally. We continue to encounter the same problems that have taken place throughout history here in Butler County. She explained that she grew up in North Carolina and went to segregated schools. When bussing took place, she remembered rocks and bricks thrown at the school buses. She stated that structural racism has not been resolved in this country. She commented that past City leaders have been working to change hiring practices and she is pleased that progressive dialog is continuing with the Police Department. We need to resolve the hostility if we are going to have peace and progress and not destroy our neighborhoods. We have an opportunity to grow through our policy changes and by learning from each other.

Ms. Vitori stated that her heart was heavy from the events of the week. She introduced a resolution speaking out against injustice and systemic racism in our country for City Council to consider adopting at the next meeting. She read an excerpt from the sample resolution.

Mr. Mulligan stated that he shared in the sadness and disappointment of the events in Minnesota. Obviously, those actions don’t reflect the best of any Police Department. Those actions have opened up a very deep wound in America. I am hopeful and prayerful that Middletown can be part of the solution. It is about building trust across racial and economic divides. If we can do that in Middletown, it would be a great step forward to building friendships and relationships and we would be a better City for it.

Mr. Moon commented on the week’s events and the tragic death of Mr. Floyd. He thanked the Citizens Advisory Board, the Middletown NAACP and the Ministerial Alliance for the engagement and their love for this community. He stated that the week’s events strike very close to home because he has family members that are African American. Knowing that they have to have
Ms. Nenni stated, “We are as we declare each meeting in the Pledge of Allegiance: One Nation, Under God, Indivisible, with Liberty and Justice for All. Until our neighbors in the Black Community are given the liberty and justice that their white counterparts receive without conditions, the protests in America and now across the globe, will continue. Watching peaceful protests evolve into the looting and destruction of my old neighborhood in Over-The-Rhine over the weekend, I was flooded with emotions for my fellow small businesses. I felt loss, fear, anger, disappointment - but these were the exact same emotions that spurred outrage against the public murder of yet another unarmed black person. My white privilege has protected me, and until more white people can admit this, nothing will change. This doesn’t mean that violence is the answer, it is never the answer, but that is the point. I am proud to call Middletown home, because in this time of turbulence our Chief, law enforcement and community leaders have come together to support one another and ensure the safety and prosperity of those in most need. As we move forward, let us follow their example. Let’s be better than we were before - for each other - with Liberty and Justice for all. This City of ours is resilient in so any ways. We continue to protect the most vulnerable in our community by practicing social distancing, We support our first responders and protect our small businesses. We hold ourselves and others accountable to do the right thing. So what can our citizens do? Keep protecting yourself and others. Peacefully practice your rights to free speech and report wrongdoing - if you see something say something, share any specific concerns you have for the community with the Police Department’s Citizen Advisory Board, and know that YOU can make Middletown a better and safer place to live. Thank you.”

Ms. Condrey stated, “We can all agree that no human deserves to be treated unjustly. I look forward to participating in many conversations and events to honor the right things and justice. This extends from bullying, slander, and libel and to acts of violence. React vs Respond, there is a big difference. A reaction is survival-oriented and on some level a defense mechanism. It might turn out okay but often a reaction is something you regret later. A response on the other hand usually comes more slowly. It’s based on information from both the conscious and unconscious mind. Communication is the key to understanding each other and knowing each other. I give Middletown Police Department a lot of credit for, despite low staffing levels, focusing on Community Oriented Policing and having a continued presence and positive impact on our City. I encourage citizens to maintain a regular line of communications with city staff and elected officials, about not just this topic but all topics of importance. Communications with our City officials in Middletown are increasing in frequency and depth of conversation; you may find exactly what you are looking for through participation in such conversations. Diplomacy on all levels has proven throughout history to be the most peaceful, least expensive, and most effective tool in our belt as humans. The limitation of riots, moral questions aside, is that they cannot win and their participants know it. Hence, rioting is not revolutionary but reactionary because it invites defeat. It involves an emotional catharsis, but it must be followed by a sense of futility. “Life’s most persistent and urgent question is, ‘What are you doing for others?’ Both quotes are from Martin Luther King Jr., which makes them especially relevant to recent topics. When considering your own response, ask yourself if this is a thought-out response or an initial survival-oriented reaction you may regret later and challenge yourself to devise a worthwhile response, perhaps even organize an event or clean-up in honor of an individual or event.”

Ms. Nenni

Ms. Condrey

Ms. Nenni

Ms. Condrey

Ms. Condrey

Ms. Nenni

Mr. Mulligan moved to approve the issues and actions listed on the Consent Agenda. Ms. Nenni seconded. Motion carried. Ayes: Ms. Nenni, Mr. Moon, Mr. Mulligan, Ms. Condrey, Ms. Vitori.

<table>
<thead>
<tr>
<th>CITY MANAGER REPORTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acting City Manager Cohen stated that nothing that she could talk about tonight is as important as what is going on in the country right now. Her focus has been to open up a dialog between our community members and she commended Chief Birk for his immediate actions to reach out to the community and know that we are here for our citizens. She liked what Pastor Kelly said about learning from each other. She hopes that will be the lesson that we learn over the next few months, that we need to spend more time listening and learning together instead of talking. She encouraged citizens to discuss issues with Council members and City staff.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CONSENT AGENDA</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Ms. Nenni</th>
</tr>
</thead>
<tbody>
<tr>
<td>React vs Respond, there is a big difference. Ms. Nenni stated, “We are as we declare each meeting in the Pledge of Allegiance: One Nation, Under God, Indivisible, with Liberty and Justice for All. Until our neighbors in the Black Community are given the liberty and justice that their white counterparts receive without conditions, the protests in America and now across the globe, will continue. Watching peaceful protests evolve into the looting and destruction of my old neighborhood in Over-The-Rhine over the weekend, I was flooded with emotions for my fellow small businesses. I felt loss, fear, anger, disappointment - but these were the exact same emotions that spurred outrage against the public murder of yet another unarmed black person. My white privilege has protected me, and until more white people can admit this, nothing will change. This doesn’t mean that violence is the answer, it is never the answer, but that is the point. I am proud to call Middletown home, because in this time of turbulence our Chief, law enforcement and community leaders have come together to support one another and ensure the safety and prosperity of those in most need. As we move forward, let us follow their example. Let’s be better than we were before - for each other - with Liberty and Justice for all. This City of ours is resilient in so any ways. We continue to protect the most vulnerable in our community by practicing social distancing, We support our first responders and protect our small businesses. We hold ourselves and others accountable to do the right thing. So what can our citizens do? Keep protecting yourself and others. Peacefully practice your rights to free speech and report wrongdoing - if you see something say something, share any specific concerns you have for the community with the Police Department’s Citizen Advisory Board, and know that YOU can make Middletown a better and safer place to live. Thank you.”</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Ms. Condrey</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ms. Condrey stated, “We can all agree that no human deserves to be treated unjustly. I look forward to participating in many conversations and events to honor the right things and justice. This extends from bullying, slander, and libel and to acts of violence. React vs Respond, there is a big difference. A reaction is survival-oriented and on some level a defense mechanism. It might turn out okay but often a reaction is something you regret later. A response on the other hand usually comes more slowly. It’s based on information from both the conscious and unconscious mind. Communication is the key to understanding each other and knowing each other. I give Middletown Police Department a lot of credit for, despite low staffing levels, focusing on Community Oriented Policing and having a continued presence and positive impact on our City. I encourage citizens to maintain a regular line of communications with city staff and elected officials, about not just this topic but all topics of importance. Communications with our City officials in Middletown are increasing in frequency and depth of conversation; you may find exactly what you are looking for through participation in such conversations. Diplomacy on all levels has proven throughout history to be the most peaceful, least expensive, and most effective tool in our belt as humans. The limitation of riots, moral questions aside, is that they cannot win and their participants know it. Hence, rioting is not revolutionary but reactionary because it invites defeat. It involves an emotional catharsis, but it must be followed by a sense of futility. “Life’s most persistent and urgent question is, ‘What are you doing for others?’ Both quotes are from Martin Luther King Jr., which makes them especially relevant to recent topics. When considering your own response, ask yourself if this is a thought-out response or an initial survival-oriented reaction you may regret later and challenge yourself to devise a worthwhile response, perhaps even organize an event or clean-up in honor of an individual or event.”</td>
</tr>
</tbody>
</table>
Waive Charter

Mr. Mulligan moved to suspend the Charter provision that requires reading on two separate days and to declare Resolution No. R2020-24 an emergency measure to be read one time only. Mr. Moon seconded. Motion carried. Ayes: Mr. Moon, Mr. J. Mulligan, Ms. Condrey, Ms. Vitori, Ms. Nenni.

Res. No. R2020-14
Amend Appropriations
Municipal Garage Fund

Resolution No. R2020-14, a resolution to make adjustments to appropriations for current expenses and other expenditures of the City of Middletown, Counties of Butler and Warren, State of Ohio, for the period ending December 31, 2020 (Municipal Garage Fund) was read for the second time.

Mr. Mulligan moved to approve Resolution No. R2020-14, a resolution to make adjustments to appropriations for current expenses and other expenditures of the City of Middletown, Counties of Butler and Warren, State of Ohio, for the period ending December 31, 2020. (Municipal Garage Fund) Ms. Nenni seconded. Motion carried. Ayes: Mr. J. Mulligan, Ms. Condrey, Ms. Vitori, Ms. Nenni, Mr. Moon.

Res. No. R2020-15
Amend Appropriations
Transit Fund

Resolution No. R2020-15, a resolution to make adjustments to appropriations for current expenses and other expenditures of the City of Middletown, Counties of Butler and Warren, State of Ohio, for the period ending December 31, 2020 and declaring an emergency was read with no action requested until June 16, 2020. (Transit Fund)

Ord. No. O2020-24
CBA with FOP
Dispatchers

Ordinance No. O2020-24, an ordinance authorizing a collective bargaining agreement with the Fraternal Order of Police, Ohio Labor Council (Dispatchers) for the years January 1, 2020 through December 31, 2022 and declaring an emergency was read.

Mr. Mulligan moved to approve Ordinance No. O2020-24, an ordinance authorizing a collective bargaining agreement with the Fraternal Order of Police, Ohio Labor Council (Dispatchers) for the years January 1, 2020 through December 31, 2022 and declaring an emergency. Ms. Vitori seconded. Motion carried. Ayes: Ms. Condrey, Ms. Vitori, Ms. Nenni, Mr. Moon, Mr. J. Mulligan.

ADJOURNMENT

At 7:05 p.m., the meeting was declared adjourned until June 16, 2020 at 4:30 p.m. in Council Chambers.

Nicole Condrey, Mayor

Attest: __________________________
At 4:30 p.m., Mayor Condrey called the City Council work session to order in the Police Administration Conference Room, Lower Level of the City Building.


City Council met in a work session to discuss the guidelines for citizens comments during a regular meeting. The group discussed different options such as listing the guidelines on the City Council agenda, not allowing people to yield time to other speakers, limiting the total amount of time for citizens comments, combining groups of 5 or more and having them choose a spokesperson and allow more time. The group reviewed the guidelines that other entities follow. City Council was clear that they wanted to be inclusive and to hear from the citizens of Middletown. The group settled on the following guidelines for citizens comments:

Middletown City Council has maintained the solicitation of citizen input as part of its council meetings for some time. Whether during the council work session, public hearings, or related to legislation, public input is gathered. There is no state or federal statute that requires general citizen input into the legislative process, however, with the desire to gather input, council offers this opportunity to the citizens of Middletown. With the return of the combined work session and business meeting in chambers, the following guidelines are established for the citizens comment section of the agenda:

Comments must be limited to 3 minutes per person (blue lights indicate when 1 minute remains).

Speakers must be a city resident or have a business interest within the city. A respectful, professional presentation is expected of all participants. Personal attacks on staff, council members or other individuals will not be tolerated. No foul language will be tolerated.

Questioning of or debating with staff or council members will not be permitted.

Speakers should state their name, address and topic for the record at the beginning of their presentation.

Comments on pending legislation before council should be noted on the face of this card. A total of 60 minutes will be allocated on the agenda for citizen comments.

Topics must be related to City business.

The delegation of one’s time to another speaker is prohibited.

Speaker cards will be collected at the start of the meeting. Speakers should be present to fill out card prior to start of the meeting. Those individuals not adhering to the rules will lose the opportunity to speak before council. Inappropriate language, actions, or personal attacks will result in the immediate suspension of privileges. Matters or issues that may warrant the attention of the citizens of Middletown should be scheduled with the City Manager's office and may be presented under the Manager's agenda item (county wide levies, information on city schools, etc).

At 5:30 p.m., Mayor Condrey called the City Council meeting to order in in Council Chambers, Lower Level of the City Building.


Finance Director Burton explained that the budget schedule as required by the Ohio Revised Code, Chapter 5705.

June 16, 2020 - Public hearing, receive, file and adopt by Motion

July 15, 2020 - Deliver to Butler and Warren County Auditors

Mr. Burton explained that the Annual Tax Budget has two purposes:

1) The 2021 beginning cash balances and 2021 projected revenues for each fund in this budget become the estimated 2021 resources for the City. The 2021 annual appropriations usually passed by City Council in November 2020 may not exceed these estimated resources. The objective, therefore, is to be realistic in these resource projections. If necessary, these estimated resources can be amended in writing during the 2021 calendar year by the Finance Department. This would be necessary if revenues are underestimated in this budget, or if expected revenues are not received. Because the estimated resources can be amended, the tax budget does not set or limit Council’s ability to adjust, increase, or decrease the permanent budget appropriation resolution to be passed later this year; and

2) A City's annual tax budget also supports the need for its annual property tax levy. The current levy of 6.90 mills (1.0 mill for the Senior Citizens Levy) will be requested for 2021.
The assumptions made in projecting the 2021 revenues and expenditures in this tax budget were:

1. Revenues in all funds agree with the most recent Financial Plan. The General Fund revenues projected for 2021 are projected with a 1% increase and expenditures projected with 2% decrease.
2. All 2021 operational costs agree with the most recent Financial Plan.
3. The 2021 debt service costs are at actual levels based upon debt repayment schedules already set. Capital improvement expenditures are from the five-year capital improvements plan.
4. These estimates are based on the current knowledge of the revenue stream and the current expenditures.

This budget must be submitted each year to the County by July 15 as required by Ohio Revised Code. The 2021 Tax Budget indicates that General Fund expenditures will exceed General Fund revenues by approximately $1.1 million and that the 2021 year-end cash balance in the General Fund will be about $5.1 million, which is a 15% reserve balance. This budget will be replaced with a permanent appropriation resolution later this year.

Mayor Condrey opened the public hearing at 5:34 p.m. and called for those who would like to speak in favor of the proposed 2021 tax budget; hearing none she called for those who would like to speak in opposition to the 2021 tax budget; hearing none the public hearing was closed at 5:35 p.m.

CITIZEN COMMENTS

Mary Beth Lodge, 2113 Logan Avenue, Middletown, Ohio stated that she is not a pilot, skydiver or airport manager, but she is distressed by the issue. She is good at observation and everyone who spoke about the skydiving spoke about safety. As a business owner, if you have to choose between safety and loyalty to a location, safety will always supersede loyalty.

Zack Ferrell, 7747 Myers Road, Middletown, Ohio asked about putting a detached garage on a property at 6666 Locust Lane in Middletown. The Zoning Department said that the garage must be put behind the house. There are 4 other properties with garages at the side of the house in the area. He stated that he wants to keep homeowners in Middletown. Ms. Cohen will follow up with Mr. Ferrell.

Cal Wills, 3304 Barbara Drive, asked how he could become a member of the Citizens Advisory Board to the Police. Chief Birk welcomed him to attend the Citizens Advisory Board meeting on June 17. Clerk Schenck will contact Mr. Wills so that he can apply to serve as a member of the CAB.

COUNCIL COMMENTS

Ms. Nenni thanked Chief Birk and the officers that provided protection for and participation in the peaceful protests happening in downtown Middletown. Their engagement in the community, the Youth Coalition and Citizens Advisory Board meetings will have a meaningful impact on Middletown and its future. I look forward to standing with the Middletown Police Department and the NAACP at the Middletown United for Change March on Saturday, June 20th. We will be meeting at 10 a.m. at the Transit Station and walking to the City Building for an organized program. I welcome everyone to join us. I would like to thank Ms. Cohen and City staff for their attention to the sample legislation that Ms. Vitori proposed at the June 2nd meeting. They drafted a piece of legislation that demonstrates Middletown’s commitment to creating a more inclusive community for all of our citizens. Thank you to Jackie Phillips for her continued response to the Covid 19 pandemic. From a small business standpoint, I appreciate the regular emails and communication from the Health Department with best practices and state-level updates. I also appreciate the work of the Economic Development Department and Downtown Middletown Inc. to provide picnic tables and activities for our citizens to enjoy in our downtown. I have seen many families enjoying our events. Thank you to Jake Burton and Scott Tadych for keeping the wheels turning during tough economic times and budget cuts. We will come out of this eventually and their frugality and creativity will certainly help us keep the momentum. I truly feel that our staff believes in a brighter future for Middletown. I can’t wait to welcome Mr. Palenick to the team in July.

Ms. Vitori thanked City staff for taking the legislation that she proposed and turning it into something that I am really happy to pass tonight as a resolution and be able to present at the United for Change March on Saturday. She thanked her fellow Council members that supported it.

Ms. Condrey thanked all of the citizens and community partners that have reached out and had meaningful dialog about diversity and inclusion. Miami University had a great panel that I was honored to participate in. It was really helpful on the topic. I look forward to participating in the upcoming United for Change March and to continue communication with and listening to everyone in our City. We are committed to equal treatment of all of our citizens, I am also looking forward to welcoming Mr. Palenick to our City. He has been in contact with some of our community partners already.
Ms. Cohen discussed opening the side lot program. Council previously authorized the sale or property to those who were maintaining lots or paid a nominal fee of $500. The program was put on hold in 2018 to allow the update to the Housing Plan. The City has been holding property to make sure disposition is consistent with Housing Plan. She recommended opening up the program on July 1, 2020. This allows the City to cut maintenance costs and citizens to expand their current properties. She discussed the proposed new rules of the program:

- Disposition must be to adjacent property owner or non-profit agency
- Requester must have no delinquent fees or taxes owed to the City
- Requester must have no outstanding civil penalties or property maintenance violations
- Proposed use must be consistent with building and zoning regulations
- Transfer must be consistent with the Housing Plan passed by City Council
- Price for lot will be the higher of: $500.00 or the cost incurred by the City, but not reimbursed, to maintain the property for the prior 2-year period
- Each parcel will be available on a first come first served basis. Those currently having a letter of interest on file, meeting the requirements, have first right of refusal. However, to satisfy 2 adjacent property owners the parcel may be split at the City’s discretion.

Ms. Cohen explained that the cost incurred by the City for the expenses required to maintain the property for the prior 2-year period would be very transparent and easy to track. She reiterated that the transfer must be consistent with the Housing Plan approved by Council and explained that each transfer will be brought to Council for their approval. The program will begin with those who have already submitted a letter of interest on a lot. The City will contact those people and have them complete the application. The City will make citizens aware of the program through social media. There are potentially a few hundred lots available. If a person completes the side lot program, the additional yard will be considered when their property is reevaluated by Butler County Auditor’s Office.

CONSENT AGENDA

To approve the City Council minutes from February 18, March 3, March 17 and April 6, 2020.
To confirm the personnel appointment of Charles Jacob Daniels to the position of Maintenance Worker in the Department of Public Works, Water Maintenance Division.

Mr. Moon moved to approve the issues and actions listed on the Consent Agenda. Mr. Mulligan seconded. Motion carried. Ayes: Mr. Moon, Mr. Mulligan, Ms. Condrey, Ms. Vitori, Ms. Nenni.

MOTION AGENDA

To Receive, File and Adopt the 2021 Tax Budget for the City of Middletown.

Mr. Mulligan moved to receive, file and adopt the 2021 Tax Budget for the City of Middletown. Ms. Vitori seconded. Motion carried. Ayes: Mr. Mulligan, Ms. Condrey, Ms. Vitori, Ms. Nenni, Mr. Moon.

Waive Charter


Resolution No. R2020-15, a resolution to make adjustments to appropriations for current expenses and other expenditures of the City of Middletown, Counties of Butler and Warren, State of Ohio, for the period ending December 31, 2020 and declaring an emergency was read. (Transit Fund)

Mr. Mulligan moved to approve Resolution No. R2020-15, a resolution to make adjustments to appropriations for current expenses and other expenditures of the City of Middletown, Counties of Butler and Warren, State of Ohio, for the period ending December 31, 2020 and declaring an emergency. (Transit Fund) Ms. Vitori seconded. Motion carried. Ayes: Ms. Vitori, Ms. Nenni, Mr. Moon, Mr. Mulligan, Ms. Condrey.

Resolution No. R2020-16, a resolution to make adjustments to appropriations for current expenses and other expenditures of the City of Middletown, Counties of Butler and Warren, State of Ohio, for the period ending December 31, 2020 and declaring an emergency was read. (General Fund)

Mr. Mulligan moved to approve Resolution No. R2020-16, a resolution to make adjustments to appropriations for current expenses and other expenditures of the City of Middletown, Counties of Butler and Warren, State of Ohio, for the period ending December 31, 2020 and declaring an emergency. (General Fund) Ms. Vitori seconded. Motion carried. Ayes: Ms. Nenni, Mr. Moon, Mr. Mulligan, Ms. Condrey, Ms. Vitori.
<table>
<thead>
<tr>
<th>Resolution/Ordinance</th>
<th>Description</th>
<th>Actions/Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Res. No. R2020-17</td>
<td>Ordinance No. R2020-17, a resolution authorizing execution of the state-local agreement with the Ohio Emergency Management Agency for Public Assistance Grant Program FEMA-DR-4507-OH and designating the City Manager as the City’s Authorized Agent and declaring an emergency was read.</td>
<td>Mr. Mulligan moved to approve Resolution No. R2020-17, a resolution authorizing execution of the state-local agreement with the Ohio Emergency Management Agency for Public Assistance Grant Program FEMA-DR-4507-OH and designating the City’s Authorized Agent and declaring an emergency. Ms. Vitori seconded. Motion carried. Ayes: Mr. Moon, Mr. Mulligan, Ms. Condrey, Ms. Nenni, Ms. Vitori.</td>
</tr>
<tr>
<td>Res. No. R2020-18</td>
<td>CARES ACT Resolution No. R2020-18, a resolution authorizing a request for federal funding through the Coronavirus Aid, Relief and Economic Security (CARES) Act as provided in Ohio House Bill 481 and declaring an emergency was read.</td>
<td>Mr. Mulligan moved to approve Resolution No. R2020-18, a resolution authorizing a request for federal funding through the Coronavirus Aid, Relief and Economic Security (CARES) Act as provided in Ohio House Bill 481 and declaring an emergency. Ms. Vitori seconded. Motion carried. Ayes: Mr. Mulligan, Ms. Condrey, Ms. Vitori, Ms. Nenni, Mr. Moon.</td>
</tr>
<tr>
<td>Res. No. R2020-19</td>
<td>Establish Corona Relief Fund Resolution No. R2020-19, a resolution to establish the Local Coronavirus Relief Fund and declaring an emergency was read.</td>
<td>Mr. Mulligan moved to approve Resolution No. R2020-19, a resolution to establish the Local Coronavirus Relief Fund and declaring an emergency. Ms. Vitori seconded. Motion carried. Ayes: Ms. Condrey, Ms. Vitori, Ms. Nenni, Mr. Moon, Mr. Mulligan.</td>
</tr>
<tr>
<td>Res. No. R2020-20</td>
<td>Resolution of Support United For Change March Resolution No. R2020-20, a resolution of support of the Middletown United For Change March and commitment to enacting policies that protect minority citizens in the City of Middletown and declaring an emergency was read.</td>
<td>Ms. Vitori thanked her colleagues for their support and commented that some people might think it’s just lip service, but she hopes that it can be a lens which we can think about all of the policies that City Council enacts in the City on behalf of the black community. Ms. Condrey commented that the resolution to protect minority citizens at large. Ms. Vitori commented that the legislation speaks to the black community specifically.</td>
</tr>
<tr>
<td>Ord. No. O2020-25</td>
<td>Amend Contract Performance Site Development Ordinance No. O2020-25, an ordinance establishing a procedure for and authorizing an amendment to a contract with Performance Site Development for additional concrete removal and adding reinforcement fiber to the new concrete and declaring an emergency was read.</td>
<td>Mr. Mulligan moved to approve Ordinance No. O2020-25, an ordinance establishing a procedure for and authorizing an amendment to a contract with Performance Site Development for additional concrete removal and adding reinforcement fiber to the new concrete and declaring an emergency. Mr. Mulligan seconded. Motion carried. Ayes: Mr. Mulligan, Ms. Condrey, Ms. Nenni, Mr. Moon.</td>
</tr>
</tbody>
</table>
Ord. No. O2020-26
Amend Contract
Howell Contractors

Ordinance No. O2020-26, an ordinance establishing a procedure for and authorizing an amendment to a contract with Howell Contractors, Inc. for repair of the North Middletown Interceptor Sewer and declaring an emergency was read.

Mr. Mulligan moved to approve Ordinance No. O2020-26, an ordinance establishing a procedure for and authorizing an amendment to a contract with Howell Contractors, Inc. for repair of the North Middletown Interceptor Sewer and declaring an emergency. Ms. Vitori seconded. Motion carried. Ayes: Mr. Moon, Mr. Mulligan, Ms. Condrey, Ms. Nenni, Ms. Vitori.

Ord. No. O2020-27
Contract with Phenix Stabilization, LLC

Ordinance No. O2020-27, an ordinance establishing a procedure for and authorizing a contract with Phenix Stabilization, LLC to perform subgrade stabilization on Antrim Court, Court Donegal, Galway Circle and Helton Drive and declaring an emergency with no action requested until July 7, 2020.

Ord. No. O2020-28
ODOT Bridge Rehabilitation

Ordinance No. O2020-28, an ordinance authorizing the City Manager to consent to the Ohio Department of Transportation to rehabilitate the bridges that carry State Route 122 over the Great Miami River and the overflow channel was read the first time.

EXECUTIVE SESSION

At 6:17 p.m., Mr. Moon moved to adjourn to executive session under the authority of O.R.C. 121.22 (G) (1) To consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official; and under the authority of O.R.C. 121.22 (G) (8) To consider confidential information related to the marketing plans, specific business strategy, production techniques, trade secrets, or personal financial statements of an applicant for economic development assistance, or to negotiations with other political subdivisions respecting requests for economic development assistance, provided that both of the following conditions apply:

(1) The information is directly related to a request for economic development assistance that is to be provided or administered under any provision of Chapter 715., 725., 1724., or 1728. or sections 701.07, 3735.67 to 3735.70, 5709.40 to 5709.43, 5709.61 to 5709.69, 5709.73 to 5709.75, or 5709.77 to 5709.81 of the Revised Code, or that involves public infrastructure improvements or the extension of utility services that are directly related to an economic development project.

(2) A unanimous quorum of the public body determines, by a roll call vote, that the executive session is necessary to protect the interests of the applicant or the possible investment or expenditure of public funds to be made in connection with the economic development project. Mr. Mulligan seconded. Motion carried. Ayes: Mr. Mulligan, Ms. Condrey, Ms. Vitori, Ms. Nenni, Mr. Moon.

ADJOURNMENT

At 7:35 p.m., the meeting was declared adjourned until July 7, 2020 at 4:30 p.m. in the Police Administration Conference Room.

Nicole Condrey, Mayor

Attest: ___________________________
At 4:30 p.m., Mayor Condrey called the City Council work session to order in Police Administration Conference Room, Lower Level of the City Building.


Public Works Director Scott Tadych explained that a consultant bi-annually evaluates the conditions of the road pavement in the City. City Council reviewed the current road pavement conditions map. City Council then reviewed the five-year proposed paving schedule and the impact that it would have on the road pavement condition map. City Council discussed a ten-year quarter percent income tax levy to address the paving issues. They discussed bonding the project and getting large amounts of paving done immediately. The proceeds of the ten-year road improvement levy would pay the bond issue. They discussed putting the issue on the November 3, 2020 ballot.

At 5:30 p.m., Mayor Condrey called the City Council meeting to order in Council Chambers, Lower Level of the City Building.


Fiscal Officer Deborah Preston and Public Service Director Brielle Maynor discussed some of the programs and services available at the library. Ms. Preston presented the 2021 MidPointe Library tax budget and discussed some of the highlights.

Mayor Condrey opened the public hearing at 5:39 p.m. and called for those who would like to speak in favor of the proposed 2021 MidPointe Library tax budget; hearing none she called for those who would like to speak in opposition to the 2021 MidPointe Library tax budget; hearing none the public hearing was closed at 5:40 p.m.

Ms. Vitori commented that there had been some fun events downtown over the holiday weekend. She encouraged everyone to stay safe and healthy.

Mr. Mulligan expressed his appreciation to the NAACP and the Police Department for their work to put together the Unity March. It was a great expression of the strength and unity in the Middletown community. He hopes the positive dialog continues.

Mr. Moon commented that it was great to take part in the Unity March and thanked the NAACP, the Ministerial Alliance and the Police Department for helping to organize it. We are stronger together.

Ms. Nenni commented that she hoped that everyone had a fun 4th of July weekend and stated that she had been downtown for Downtown Middletown Inc.’s progressive picnic event. She noted that many people but not all were wearing their masks. She encouraged people to wear their masks for the safety of their neighbors. This is not political, it’s about public safety and it takes all of us to do what is right to move forward. Our community, businesses, students and City need our help to control the spread of the virus. While the City does not have the resources to police your compliance with mask mandates, we can thank you for doing your part.

Ms. Condrey expressed her thanks for the Unity March which was properly socially distanced and to the parade committee for the moving 4th of July parade. According to the Middletown Health Commissioner there are 211 confirmed cases of Covid 19 and two deaths in Middletown. We are required by the Ohio Department of Health to wear a mask in public. In public means anytime you are indoors around other people and when you go to your seat in a restaurant. We need to respect each other and get through this together.

Ms. Cohen commented that the City will push out information about the mask mandate on the City’s website and social media outlets. She is looking forward to welcoming Mr. Palenick to the City on Monday. She thanked City Council and City staff for their support during this time of transition.

To approve the City Council minutes from April 7, 13, 15, 21, 25 and May 1, 2020.

To confirm the promotional appointment of Ryan Roberts to the position of Equipment Operator in the Department of Public Works & Utilities, Division of Street Maintenance.

Mr. Mulligan moved to approve the issues and actions listed on the Consent Agenda. Ms. Vitori
<table>
<thead>
<tr>
<th>Agenda Item</th>
<th>Description</th>
</tr>
</thead>
</table>
| **MOTION AGENDA** | **Library Tax Budget**
- To Receive, File and Adopt the 2021 Tax Budget for the MidPointe Library.
- Mr. Moon moved to receive, file and adopt the 2021 Tax Budget for the MidPointe Library. Ms. Vitori seconded. Motion carried. Ayes: Mr. Mulligan, Ms. Condrey, Ms. Vitori, Ms. Nenni, Mr. Moon. |
| **Approve Purchase of Trucks for Stormwater Sewer Maintenance, Water Distribution** | 
- To approve the purchase of three new Ford F-450 trucks for Public Works off the ODAS contract for the Division of Stormwater, Sewer Maintenance, and Water Distribution in the amount of $113,253 from Lebanon Ford.
- Mulligan moved to approve the purchase three new Ford F-450 trucks for Public Works off the ODAS Contract for the Division of Stormwater, Sewer Maintenance, and Water Distribution in the total amount of $113,253 from Lebanon Ford. Ms. Vitori seconded. Motion carried. Ayes: Ms. Condrey, Ms. Vitori, Ms. Nenni, Mr. Moon, Mr. Mulligan. |
| **Replace PAPI System At the Airport** | 
- To approve a bid from Jess Howard Electric Company, of Blacklick, OH, in the amount of $153,592.50 for the replacement of the Precision Approach Path Indicator (PAPI) System at the Middletown Regional Airport.
- Mulligan moved to approve a bid from Jess Howard Electric Company, of Blacklick, OH, in the amount of $153,592.50 for the replacement of the Precision Approach Path Indicator (PAPI) System at the Middletown Regional Airport. Ms. Nenni seconded. Motion carried. Ayes: Ms. Vitori, Ms. Nenni, Mr. Moon, Mr. Mulligan. Abstain: Ms. Condrey, |
| **Proceed with 2020 Urban Paving Project** | 
- To authorize the City Manager to enter into a contract with Adleta, Inc. to proceed with the 2020 Urban Paving Concrete Work Project. The work will take place along Verity Parkway between Tytus Ave. and Eldora St.
- Mr. Mulligan moved to authorize the City Manager to enter into a contract with Adleta, Inc. to proceed with the 2020 Urban Paving Concrete Work Project. The work will take place along Verity Parkway between Tytus Ave. and Eldora St. Mr. Moon seconded. Motion carried. Ayes: Ms. Nenni, Mr. Moon, Mr. Mulligan, Ms. Condrey, Ms. Vitori. |
| **Waive Charter** | 
- Mr. Mulligan moved to suspend the Charter provision that requires reading on two separate days and to declare Ordinance No. O2020-27 and Ordinance No. O2020-29 emergency measures to be read one time only. Ms. Vitori seconded. Motion carried. Ayes: Mr. Moon, Mr. J. Mulligan, Ms. Condrey, Ms. Vitori, Ms. Nenni. |
| **Ord. No. O2020-27** | **Contract with Phenix Stabilization, LLC**
- Ordinance No. O2020-27, an ordinance establishing a procedure for and authorizing a contract with Phenix Stabilization, LLC to perform subgrade stabilization on Antrim Court, Court Donegal, Galway Circle and Helton Drive and declaring an emergency was read.
- Mr. Mulligan moved to approve Ordinance No. O2020-27, an ordinance establishing a procedure for and authorizing a contract with Phenix Stabilization, LLC to perform subgrade stabilization on Antrim Court, Court Donegal, Galway Circle and Helton Drive and declaring an emergency. Mr. Moon seconded. Motion carried. Ayes: Mr. J. Mulligan, Ms. Condrey, Ms. Nenni, Ms. Vitori, Mr. Moon. |
| **Ord. No. O2020-28** | **ODOT Bridge Rehabilitation**
- Ordinance No. O2020-28, an ordinance authorizing the City Manager to consent to the Ohio Department of Transportation to rehabilitate the bridges that carry State Route 122 over the Great Miami River and the overflow channel was read the second time.
- Mr. Mulligan moved to approve Ordinance No. O2020-28, an ordinance authorizing the City Manager to consent to the Ohio Department of Transportation to rehabilitate the bridges that carry State Route 122 over the Great Miami River and the overflow channel. Ms. Nenni seconded. Motion carried. Ayes: Ms. Condrey, Ms. Nenni, Ms. Vitori, Mr. Moon, Mr. J. Mulligan. |
| **Ord. No. O2020-29** | **Police Radio Contract**
- Ordinance No. O2020-29, an ordinance establishing a procedure for and authorizing a contract with Motorola Solutions, Inc. for the purchase of APX 6000XE police radios and declaring an emergency was read.
- Mr. Mulligan moved to approve Ordinance No. O2020-29, an ordinance establishing a procedure for and authorizing a contract with Motorola Solutions, Inc. for the purchase of APX 6000XE police radios and declaring an emergency. Mr. Moon seconded. Motion carried. Ayes: Ms. Vitori, Ms. Nenni, Mr. Moon, Mr. J. Mulligan, Ms. Condrey. |
Ord. No. O2020-30, Ordinance No. O2020-30, an ordinance approving an agreement with Knust Properties, LLC providing for the expansion of a manufacturing facility as a development project and tax exemption pursuant to the State Urban Jobs and Enterprise Zone Program, and making a determination in connection therewith, and declaring an emergency was read with no action requested until July 21, 2020.

Ord. No. O2020-31, Ordinance No. O2020-31, an ordinance establishing a procedure for and authorizing an amendment to a contract with Reliable Construction for the installation of a self-serve fueling system and declaring an emergency was read with no action requested until July 21, 2020.

Ord. No. O2020-32, Ordinance No. O2020-32, an ordinance establishing a procedure for and authorizing a contract with NFP Corporate Services to be Agent of Record for health care services from August 1, 2020 thru July 31, 2023 and declaring an emergency was read with no action requested until July 21, 2020.

Ord. No. O2020-33, Ordinance No. O2020-33, an ordinance authorizing the City Manager to enter into an agreement for a Small Business Economic Development Grant with White Dog Distilling Company was read for the first time.

EXECUTIVE SESSION
At 6:00 p.m., Mr. Mulligan moved to adjourn to executive session under the authority of O.R.C. 121.22 (G) (4) Preparing for, conducting, or reviewing negotiations or bargaining sessions with public employees concerning their compensation or other terms and conditions of their employment; and under the authority of O.R.C. 121.22 (G) (8) To consider confidential information related to the marketing plans, specific business strategy, production techniques, trade secrets, or personal financial statements of an applicant for economic development assistance, or to negotiations with other political subdivisions respecting requests for economic development assistance, provided that both of the following conditions apply:

1. The information is directly related to a request for economic development assistance that is to be provided or administered under any provision of Chapter 715., 725., 1724., or 1728. or sections 701.07, 3735.67 to 3735.70, 5709.40 to 5709.43, 5709.61 to 5709.69, 5709.73 to 5709.75, or 5709.77 to 5709.81 of the Revised Code, or that involves public infrastructure improvements or the extension of utility services that are directly related to an economic development project.

2. A unanimous quorum of the public body determines, by a roll call vote, that the executive session is necessary to protect the interests of the applicant or the possible investment or expenditure of public funds to be made in connection with the economic development project. Ms. Nenni seconded. Motion carried. Ayes: Ms. Nenni, Mr. Moon, Mr. Mulligan, Ms. Condrey, Ms. Vitori.

ADJOURNMENT
At 7:35 p.m., the meeting was declared adjourned until July 21, 2020 at 4:30 p.m. in the Police Administration Conference Room.

Nicole Condrey, Mayor
BOARD OF ZONING APPEALS MINUTES  
JANUARY 9, 2020

MEETING LOCATION: City Council Chambers, City Building

MEMBERS PRESENT: Christopher Amburgey Jim Hall Roger Daniel 
Todd Moore Jerry Heidenreich

STAFF PRESENT: Austin Eidemiller, Zoning Inspector 
Ashley Combs, Planning Director

OTHERS: Richard Peterson

Chairman Todd Moore called the meeting to order at 5:30 P.M. The roll was called by Planning Director, Ashley Combs. A voting quorum was present for the meeting. Mr. Moore welcomed new Board of Zoning Appeals member Jim Hall. Mr. Moore led the pledge of allegiance.

**ELECTION OF CHAIRMAN & VICE CHAIRMAN**

Mr. Moore explained it was time again to elect a Chairman and Vice Chairman.

Mr. Amburgey made a motion that Todd Moore continue to be Chairman of the board. Mr. Heidenreich seconded the motion. All were in favor for Mr. Moore continuing to serve as the Chairman through roll call.

Mr. Amburgey made a motion that Jerry Heidenreich continue to serve as the Vice Chairman for the board. Mr. Daniel seconded the motion. All were in favor for Mr. Heidenreich continuing to serve as the Vice Chairman through roll call.

Ms. Combs congratulated Mr. Moore and Mr. Heidenreich.

**ACCEPTANCE OF PREVIOUS MEETING MINUTES - DECEMBER 4, 2020**

Mr. Moore presented the September 4, 2019 and December 4, 2019 meeting minutes and asked if there were any needed corrections of additions. With there being none, Mr. asked for a motion. A motion was made by Mr. Amburgey and seconded by Mr. Heidenreich to accept the September 4, 2019 and December 4, 2019 meeting minutes as presented. The motion was approved unanimously through roll call. Mr. Daniel abstained from the December 4, 2019 meeting minutes due to not being unable to attend the meeting. Todd Moore abstained from the September 4, 2019 due to being unable to attend. Both were excused absences for Mr. Daniel and Mr. Moore.

**VARIANCE REQUEST CASE #1-20**

1820 S. UNIVERSITY BOULEVARD - BILLBOARD REPLACEMENT

Mr. Moore introduced Appeal Case #1-20 a request by applicant Porter Advertising LLC for an area and dimensional variance from the Middletown Development Code Chapter 1220 Signage requirements to remove an A-frame billboard structure that has four faces and
reconstruct a monopole billboard with two 12' x 25' faces (total of 600 sq. ft.). The property is located in the B-2 Community Business Zoning District where the maximum sign area allowed is 150 sq. ft. and a maximum sign height of 20 feet.

Austin Eidemiller, Zoning Inspector, presented the case. He used a PowerPoint presentation.

Mr. Eidemiller stated that the request is for applicant Porter Advertising LLC for an area and dimensional variance from the Middletown Development Code Chapter 1220 Signage requirements to remove four A-frame billboard structure that has four faces and reconstruct a single monopole billboard with two 12' x 25' faces (total of 600 sq. ft.). The property is located in the B-2 Community Business Zoning District where the maximum sign area allowed is 150 sq. ft. and a maximum sign height of 20 feet.

Mr. Eidemiller displayed a zoning map of the property and that the property is zoned B-2 Community Business Zoning District. Mr. Eidemiller displayed photos of the existing billboards and noted the total size of the signage 1,200 SQ FT.

Mr. Eidemiller displayed renderings of the proposed billboards.

Mr. Eidemiller stated that per the Middletown Development Code A sign, freestanding is defined as: “Any sign supported upon the ground by a monument, pedestal, pole, bracing, or other permanent measure and not attached to any building. See also the definition of “Sign, Ground-Mounted” and “Sign, Pole.”

He stated that per the Middletown Development Code 1220.05 (e): when two identical sign faces are placed back to back, so that both faces cannot be viewed from any one point at the same time, and when such sign faces are part of the same sign structure and are not more than 24 inches apart, the sign area shall be computed by the measurement of one of the faces. If the two faces are unequal, the sign area shall be calculated based on the larger of the two faces.

Per Middletown Development Code 1220.10 Nonconforming Signs (a) (b) 1-4 (c) (d) (e): (a) All signs that do not conform to the specific standards of this code may be considered legally nonconforming if the sign was erected in conformance with a valid certificate of zoning compliance and complied with all applicable laws at the time of the sign's installation or if the sign was part of a property that was annexed to the City.
(b) A sign shall lose its legal nonconforming status and must be brought into compliance with the provisions of this chapter by an application for and issuance of a certificate of zoning compliance or by complete removal, if any of the following occurs:
(1) If such sign is damaged to an amount exceeding 50 percent of the sign's replacement value, as determined by at least two sign companies requested to provide a quote;
(2) The sign type or structure is altered in any form;
(3) The sign is relocated;
(4) The nonconforming sign and its structure (including support and frame and panel) are determined by the Development Code Administrator to be unsafe or in violation of this code or the building code, and are declared a nuisance.
(c) Failure to bring a sign into compliance after loss of a legal nonconformity status as defined in (b) above shall cause the sign to be considered an illegal sign.
(d) Minor repairs and maintenance of nonconforming signs, such as repainting, electrical repairs and neon tubing repair shall be permitted. Maintenance does not include making
changes in the words, symbols, or design on the current sign unless the words and symbols are part of the changeable reader board or removable panels on a sign cabinet.
(e) Sign face changes where there is no change to the nonconforming sign structure including change in sign face area, height, or alteration of the sign cabinet, if applicable, may be made without a certificate of zoning compliance and without losing the legal nonconforming status of the sign. These actions include, but is not limited to, replacement of a sign face, repainting of a sign face, etc.

Mr. Eideemiller displayed Table 1220-2: Maximum Sign Areas and Height for Freestanding Signs and explained the table. Mr. Eideemiller noted that the following permits will be required: Building Department, Planning & Zoning, and Fire Department.

Mr. Eideemiller explained the Middletown Development Code 1226.10(c)(3) Area and Dimensional Variance Review Criteria:
A. The following factors shall be considered and weighed by the BZA to determine practical difficulty:
i. Whether special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable generally to other lands or structures in the same zoning district; examples of such special conditions or circumstances are: exceptional irregularity, narrowness, shallowness or steepness of the lot, or adjacency to nonconforming and inharmonious uses, structures or conditions;
ii. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance; iii. Whether the special conditions and circumstances are a direct result from the actions of the applicant, his or her agents, or prior property owners;
iv. Whether the variance is substantial and is the minimum necessary to make possible the reasonable use of the land or structures;
v. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance;
vi. Whether the variance would adversely affect the delivery of governmental services such as water, sewer, electric, refuse pickup, or other vital services;
vii. Whether special conditions or circumstances exist as a result of actions of the owner; viii. Whether the property owner's predicament can feasibly be obviated through some method other than a variance;
ix. Whether the spirit and intent behind the code requirement would be observed and substantial justice done by granting a variance; and/or
x. Whether the granting of the variance requested will confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district.
B. No single factor listed above may control, and not all factors may be applicable in each case. Each case shall be determined on its own facts.

Mr. Eideemiller displayed the Development Code 1226.14(g) Appeals of BZA Decisions
Any person or entity claiming to be injured or aggrieved by any final action of the BZA shall have the right to appeal the decision to the applicable court of common pleas as provided in ORE Chapters 2505 and 2506.

Mr. Eideemiller concluded his staff report. Mr. Eideemiller noted that the applicant from Porter Advertising was present to answer any questions.
Mr. Moore asked if there were any questions for staff before opening the public hearing. Seeing none, Mr. Moore opened the public hearing.

Richard Peterson, with Porter Advertising, came forward to speak for the project. He used a PowerPoint presentation. He explained that he is the President of Porter Advertising and they are celebrating their 75th anniversary in 2020.

Mr. Peterson explained that they are requesting the new billboard because they want to better utilize the space, allow the property owner to use more of his property, and provide a more consistent rotation of advertisements.

Mr. Peterson explained that the benefits for the City of Middletown would be that the billboards would provide an increase visual appeal to the area, reduce visual obstructions, and decrease the number of advertising faces.

Mr. Peterson displayed current photos of the property and the proposed rendering.

Mr. Peterson lastly displayed the local clients to Middletown that use their billboard for advertising. He noted that Porter Advertising currently has 8 faces in the City of Middletown. He said that the request is a win for them and the City. He then asked the board if they had any questions.

Mr. Moore asked about the proposed layout of the proposed billboard and asked if that was an advertising trend. Mr. Peterson said that the design has been implemented of the last 20 years to maximize advertising. Mr. Moore asked about the sign height. Mr. Peterson stated that they do not like to have their signs really high in the air so the driver can view them easier.

Mr. Moore asked if the proposed sign is otherwise in compliance with the Middletown Development Code. Mr. Eidemiller confirmed that the sign meets other code standards.

Mr. Amburgey asked if the Planning Commission reviewed the request or boards. Mr. Eidemiller stated that the sign was not required to be reviewed by other City boards.

Mr. Heidenreich asked for clarification regarding the sign height. Mr. Eidemiller stated that the total sign height was 22 feet from the ground to the top of the sign.

Mr. Daniel asked for clarity regarding the review criteria for property and asked if the sign was considered property or was it the land that the sign is placed. Mr. Eidemiller stated that property that the sign sits is considered the property. Mr. Peterson explained that they pay the property owner to use the land for the billboard. Mr. Daniel asked about the cost of the billboard. Mr. Peterson stated to rebuild the billboard will cost approximately $30,000.

Mr. Heidenreich asked if the property owner asked for the signage to raise in height. Mr. Peterson stated that the property owner did ask if the signage could be raised to better utilize his business.

Mr. Amburgey asked about the contract Porter had with the property owner and what would happen if the property owner no longer wanted to host the billboards. Mr. Peterson stated that the contract is for 5 years and that the signage would be removed after that time. Mr.
Amburgey stated that he did not want to go against the Middletown Development Code, however, he would like to see the billboard’s appearance updated and modernized.

The Commission discussed the billboard’s advertising with it being off-site advertising verses onsite premise advertising. Mr. Peterson stated that this billboard would be used for off-site advertising and that there are many categories for billboards and case law regarding them.

Mr. Peterson thanked the board for their review.

Mr. Moore asked if there was anyone else in attendance that wanted to speak for or against the project. Seeing none, Mr. Moore closed the public hearing and asked for staff’s recommendation.

Mr. Eideemiller stated that based on the staff report provided and compliance with the requirements outlined in the Middletown Development Code for a dimensional variance, staff recommends APPROVAL of Variance Case #1-20 to allow for the variance square footage requested of a total of 600 square feet freestanding sign for the property located at 1820 S. University Boulevard.

Mr. Daniel asked if the board grants the variance and their lease is up did the variance approval cover the next sign company that could potentially use the billboards. Mr. Eideemiller stated that as long as there is no structural change to the sign then or damaged greater than 50% then the sign can stay and be used by another company. Mr. Daniel asked if Porter Advertising owned the structure. Mr. Eideemiller stated that Porter did own the sign. Mr. Daniel asked if they removed the sign could another company build the same sign without needing another variance approval. Mr. Eideemiller stated that another company could construct the same sign without another approval since the approval goes with the property.

Mr. Amburgey mentioned that if the board approves this billboard it could set a precedent for future approvals for billboards. Mr. Eideemiller stated the review criteria and noted that each item is reviewed different and review criteria is applied case by case. Mr. Amburgey stated that this sign replacement will be an improvement and he may not feel the same if another request was brought before the board.

Mr. Daniel made a motion to accept the staff’s recommendation for the variance. Mr. Amburgey seconded the motion for acceptance of staff’s recommendation. The motion for approval carried through roll call for Variance Request Case #1-20. Ms. Combs noted that staff would send an outcome letter for the approval to the applicant. Mr. Eideemiller stated that the sign will need an approved zoning compliance permit prior to construction.

NEW/OLD BUSINESS
The board thanked Mr. Jim Hall again for his service. Mr. Hall stated that he looked forward to serving on the board and working with everyone. He stated his professional background.

Mr. Amburgey requested that the legal opinion given for the December 4, 2019 appeal to be included in the meeting minutes. Ms. Combs noted that she would get the legal opinion added to the meeting minutes. Mr. Eideemiller asked for a motion to add the legal ad. Ms. Combs asked if all were in favor. All board members were in favor to add the legal opinion received to the December 4, 2019 meeting minutes as requested.
ADJOURNMENT

With no further business to conduct, there was a motion to adjourn at 6:25 pm.
The motion passed unanimously.

Todd Moore, Chairman
Chairman

Austin Eidemiller
Zoning Inspector

*Full Meeting Recording Available in the Planning & Zoning Department.
Chairman Todd Moore called the meeting to order at 5:30 P.M. The roll was called by Planning Director, Ashley Combs. A voting quorum was present for the meeting. Mr. Moore led the pledge of allegiance.

**Variance Request #2-20**

Public Hearing: Variance Case #2-20: A request by applicant John Grier on behalf of K P PROPERTIES OF OHIO LLC. for an area or dimensional variance approval to allow for front yard loading areas at the property located at 4640 Emerald Way, Middletown, OH 45005. The property is zoned I-2 General Industrial District and only allows for a side or rear yard loading area.

Austin Eidemiller, Zoning Inspector, presented the case. He used a PowerPoint presentation.

Mr. Eidemiller displayed a zoning map that indicates the contiguous properties near 4640 Emerald Way are also located in the I-2 zoning district.

Mr. Eidemiller displayed a boundary survey and explained that the current parcel is not split off but the intent is to split the parcel for the proposed development.

Mr. Eidemiller displayed an elevation view of the two proposed spec buildings. Mr. Eidemiller stated that the two spec buildings will total about 88,000 square feet in area.

Mr. Eidemiller displayed the site plan and noted that the intent for tonight’s variance request is because of the pie shaped lot, and the gas easement located on the west portion of the site forced the location of the loading areas in the front yard which does not meet the Middletown Development Code. Mr. Eidemiller noted that in order to develop the two buildings, the loading area would have to be located in the front. Mr. Eidemiller noted that the property is located in the I-2 Zoning District and that under Middletown Development Code 1218.06 (b) Design Standards (3) Loading Areas shall be located as near as possible to the main structure and shall be located in the rear yard to the maximum extent feasible. When locating such loading areas in the rear is not feasible as determined by the Development Code Administrator, then the loading areas can be in the side yard. The spaces shall be subject to the minimum setbacks of that zoning district.
Mr. Moore asked the Board of Zoning appeals if there is anymore questions for staff. There were no more questions and Mr. Moore opened the public hearing.

Applicant, John Grier was sworn in by Mr. Kash.

John Grier stated that he is here for any questions that the board may have. Mr. Heidenreich asked Mr. Grier if the proposed development will have fire suppression systems inside the building and that if he is concerned for the rear access to the building for the fire department. Mr. Grier stated that the buildings will have fire suppression systems as well as generators and fire pumps because the water pressure is not adequate. Mr. Grier noted that to the north there is also fire hydrants.

Mr. Moore asked if there were any more questions for Mr. Grier as there were none Mr. Moore asked if there is anyone else who would like to speak in favor of the proposed variance request. Hearing none, Mr. Moore asked if there is anyone would like to speak opposition to the proposed request. Hearing none, Mr. Moore closed the public hearing.

Mr. Moore moved to staff recommendation.

Mr. Eidemiller stated that based on the staff report provided and compliance with the requirements outlined in the Middletown Development Code for a dimensional variance, staff recommends APPROVAL of Variance Case #2-20 to allow for the front yard loading area for the property located at 4640 Emerald Way contingent upon the completion of a lot split to meet the Site Development Requirements for Nonresidential zoning districts.

Mr. Moore called for a motion. Mr. Heidenreich made a motion to accept staff recommendation Mr. Daniel seconded.

The motion for approval carried through roll call. Variance Request #2-20 was approved as submitted.

Mr. Grier thanked staff for all of the hard work to get this project underway.

Variance Request #3-20

Mr. Moore moved to variance request #3-20 Variance Case #3-20: A request by applicant Tim Dwyer on behalf of Middletown Park Realty LLC. for variance approval to allow for menu board signage to be located in the front yard of the property located at 4794 Roosevelt Boulevard, Middletown, OH 45044. The property is zoned O-1P Office District where menu board signage is only permitted in the rear yard.

Mr. Eidemiller presented the staff report using a PowerPoint presentation.

Mr. Eidemiller displayed a zoning map and noted that subject property is located in O-1P zoning district. Mr. Eidemiller stated that the “P” stands for Planned Use Modification to allow for Restaurants in this zoning district.

Mr. Eidemiller noted that the following zoning districts are contiguous to this property, North R-3 and R-4, East and West O-1P and to the South is R-4 zoning districts.

Mr. Eidemiller displayed the signage matrix that shows the proposed menu board signage and
the public hearing and asked for staff recommendation.

Mr. Eidemiller stated based on the staff report provided and compliance with the requirements outlined in the Middletown Development Code for a dimensional variance, staff recommends APPROVAL of Variance Case #3-20 to allow for the front yard Menu Board Signs for the property located at 4794 Roosevelt Boulevard contingent upon the completion of a lot split to meet the Site Development Requirements for Non-residential zoning districts.

Mr. Moore asked for a motion. Mr. Heidenreich made a motion to accept staff's recommendation, Mr. Kash seconded.

The motion for approval carried through roll call. Variance Request #3-20 was approved as submitted.

ADJOURNMENT
With no further business to conduct, there was a motion to adjourn at 6:45 pm. The motion passed unanimously.

Todd Moore  
Chairman

Austin Eidemiller  
Zoning Inspector

*Full Meeting Recording Available in the Planning & Zoning Department.*
DATE: Thursday, January 16, 2020
PLACE: Conference Room 2B, City Building, Second Floor
TIME: 4:30PM
MEMBERS PRESENT: Gary Gross    David McCauley-Myers
STAFF PRESENT: Ashley Combs, Planning Director
               Austin Eidemiller, Zoning Inspector
OTHERS PRESENT: Etta Reid

CALL MEETING TO ORDER
The meeting was called to order at 4:30PM by Chairman Gary Gross. Ashley Combs, Planning Director, called the roll. Two members were presented and constituted a voting quorum.

Ms. Combs noted that the Project Engineer, Etta Reid, was present for any specific questions regarding the project plans.

Ms. Combs pointed out that she was still waiting to hear which member was chosen from City Council to replace Mr. Bohannon.

ELECTION OF CHAIRMAN & VICE CHAIRMAN
The board decided to wait for nominations until the City Council representative was chosen.

APPROVAL OF MEETING MINUTES
Chairman Gross asked if there were any needed corrections to the October 10, 2019 minutes. Seeing none, Mr. McCauley-Myers moved to approve the minutes as presented. Mr. Gross seconded the motion. All voting members were in favor for approving the October 10, 2019 minutes as presented.

Mr. Gross asked about the progress for 200 Curtis Avenue. Ms. Combs explained that the foundation had been poured and the building was starting to be assembled.

WATERFORD PLACE
Mr. Gross introduced the case as a request by applicant Todd Hall for approval of the elevation and landscaping plan for the Waterford Place development. The Preliminary Plan for Waterford Place was approved by the Planning Commission at their meeting held on December 11, 2019 with the condition that the Architecture Review Board would review and approve the home elevations and landscaping plan prior to submitting for Final Development Plan approval.
Ashley Combs, Planning Director, presented the staff report.

BUILDING ORIENTATION:
Ms. Combs stated that per the Middletown Development Code the main entrance of any residential building shall be oriented toward a public street. She explained that the proposed homes will be oriented toward the streets.

BUILDING MATERIALS
Ms. Combs explained that the proposed building materials would be predominately brick veneer with vinyl shake siding as a secondary decorative material.

Ms. Combs read that per the Middletown Development Code the first above-ground story of a residential dwelling is required to have facades constructed of stone, brick, wood, stucco, cultured stone, cement siding, or hardy plank when such facades are visible from a public street. All other exterior walls areas of the dwelling may be constructed of other code approved building materials. All siding shall be either horizontal or vertical in placement. All potential below grade living areas shall be constructed with poured concrete walls.

ROOFS & PROJECTIONS
Ms. Combs noted that the roof pitch for the proposed home is six-twelves. She also stated that per the plans submitted that the roof will dimensional shingles.

Ms. Combs read that per the Middletown Development Code the roof pitch shall have a minimum five-twelves pitched roof design, including the roof area located over the garage. The roof area located over the porch and entrance portions of the dwelling may be constructed using a minimum of four-twelve pitched roof design. Roofing materials shall be compatible with the design and style of the dwelling unit and development.

Ms. Combs also pointed out that per the Middletown Development Code a minimum overhang of 12 inches shall be provided over all faces of the exterior walls of a dwelling. The material of such projections shall be constructed of durable and maintenance-free materials. The entire exterior areas of chimneys used for masonry, wood-burning open flame fireplaces shall be constructed of the exterior materials provided for in division.

Ms. Combs explained the following architectural breaks:
Front Elevation: two entry doors, two front facing car garages, and architectural breaks
Rear Elevation: six windows (two single and four double)
Right Elevation: two doors and architectural break
Left Elevation: two doors and architectural break

Ms. Combs noted that per the Middletown Development Code no horizontal plane on ground floor street-facing building frontage shall continue over 24 feet in length without being broken into different planes. Any sidewalls exceeding 30 feet in length shall be broken into different planes or be substantially broken with doors, windows, or a variety of siding materials. No dwelling shall be constructed with aluminum windows or aluminum primary doors. She stated aluminum clad and vinyl clad windows, as well as garage doors are acceptable.
Ms. Combs stated that the home is proposed to have a 30 ft. front yard setback, which is the Middletown Development Code front yard setback requirement.

Ms. Combs explained that per the Middletown Development Code the mass, scale and architectural style of each dwelling shall be compatible with that of the block face. In no instance shall the building setback exceed more than ten feet beyond the required front yard setback. All buildings shall be placed in a location compatible with other buildings of the block face.

Mr. McCauley-Myers asked if the windows were transparent and had glass. Ms. Reid said she was not sure and assumed there would be some transparency element with a privacy element. Mr. Gross stated with no windows in the front it's important that there be some glass element. Mr. McCauley-Myers stated that he didn't think it's something the board could require since it's not a Middletown Development Code violation. Ms. Reid said that she would confirm with Mr. Hall.

**GARAGES AND DRIVEWAYS**
Ms. Combs noted that the duplex home proposes two street facing garages, however they comprise less than 50% of the ground home frontage. She referred to the drawings.

Ms. Combs stated that per the Middletown Development street-facing garages shall not comprise more than 50% of the ground floor building frontages. Any garage with more than two car parking capacity should not directly face onto any street. It is recommended that any garage with more than two car parking capacity should have the sidewalk facing onto the street. All garage doors shall be compatible with the dwelling style and colors. Circular driveways shall be avoided as they increase the amount of paved area in the front yard. Also, consider using paving materials other than plain concrete or asphalt, as the driveway paving material has a big impact on the visual character of the property.

Ms. McCauley-Myers asked for clarification regarding the garage doors compared to the renderings. Ms. Reid noted that there were garage doors as well a covered porch right off of the driveway. She also noted that there was porch on the back with double doors.

**LANDSCAPING**
Ms. Combs noted that the landscaping plan submitted proposes two landscaping beds and two front yard trees.

Ms. Combs read the Middletown Development Code minimum landscaping requirements:

1. Public view space. Front yards shall be landscaped with plants and ground covers to enhance the dwelling. At least 15% of the front yard shall be landscaped with shrubbery, hedges, and flowering types of planting materials. For purposes of this section the front yard area shall be the minimum front yard setback multiplied by the minimum lot width for the specific development or zone classification in which the dwelling is located. For corner lots this landscape area shall be increased to 20% based on the yard area for a single frontage, however this 20% landscape area may be applied to either or both street frontage. Impervious surface shall not exceed 30% of the front yard. Impervious surface includes driveway, walkways and sidewalks.

2. Trees. A minimum of three trees shall be provided in each front yard area, up to two of which may be planted between the sidewalk and the street curb. Each tree shall be a
minimum of one and one-half inch caliper in diameter. A list of recommended trees for Middletown is on file with the Department of Planning for reference.

(3) Fencing. Fencing, if used, should be an integral part of the front yard landscaping effort. Fencing material shall be compatible with the style and design of the dwelling unit. Only decorative fencing no higher than 36 inches shall be used unless otherwise prohibited by the ordinance codified herein.

(4) Private space. Appropriate landscaping shall be provided in the rear and side yards for privacy purposes. It is recommended to use natural landscaping materials around the perimeter of the lot. Natural landscaping materials include trees, shrubbery, hedges and stone and/or brick walls. Chain link fencing shall not be used around the perimeter of the lot.

Mr. McCauley-Myers asked if the developer would maintain the landscaping. Ms. Reid stated that she was not sure and did not ask Mr. Hall. Ms. Combs stated that when she had last spoke to Mr. Hall regarding the project he was going to have an HOA in place.

Mr. McCauley-Myers asked that the plans meet the Architecture Review requirements. Ms. Reid stated that the City requires 3 trees and their plans on have 2 trees proposed. Ms. Combs stated that Mr. Hall had told that the plans would exceed the Development Code requirements and he proposed additional plantings aside from just the 2 trees. The board discussed the idea of a possible landscaping divider with shrubbery. Mr. McCauley-Myers requested that the bush not be a burning bush due to the size that they grow.

ARCHITECTURE REVIEW BOARD POWERS
Ms. Combs explained that the Architectural Review Board has the ability to grant variances to the architectural standards provided that they find the following:

1. That the intent of the architectural standards are upheld; and
2. That the applicant clearly demonstrates that the strict enforcement of the architectural standards causes undue hardship; and
3. That an exceptional and extraordinary circumstances exists which would not be found elsewhere in the community.

Ms. Combs concluded her staff report.

BOARD DECISION:
Mr. McCauley-Myers made motion to approve the plans for Waterford Place as submitted with the following condition: That since the developer only proposes two trees that a landscaping strip be located between the driveways with a planting. Mr. Gross seconded the motion.

Ms. Combs explained the permitting process to Ms. Reid and said that she would be sending an outcome letter for the architecture board approval to her and Mr. Hall.

Ms. Combs stated that she was impressed by the level of detail and that the plans exceeded the Middletown Development Code requirement. The Board agreed and said the homes would add value to the surrounding neighborhood.
Ms. Reid thanked Ms. Combs and the Board for their review of the project and stated that the Developer, Todd Hall, was sorry that he could not attend due to a his daughter’s dance recital being that evening.

ADJOURNMENT
With no further business, Mr. Gross asked for a motion for adjournment. Mr. McCauley-Myers made a motion for adjournment and Mr. Gross seconded. The motion for adjournment passed unanimously and the meeting ended at 4:45pm.

Gary Gross, Chairman

Ashley Combs, Planning Director
MINUTES
Middletown Visitors Bureau - Board of Directors Monthly Meeting
January 27, 2020, at 6 p.m.
Location: Chamber Conference Room

1. ROLL CALL- Meeting called to order at 6pm by Betsy Hanavan

   Officers: Elizabeth Hanavan, President - Lyndsey Pittman, Treasurer - Mica Glaser Jones, Secretary - Mary Huttlinger, Executive Director

   At Large: Stefan Wannemacher, DeAnna Shores, Heather Mason

   Liaisons: Shelby Quinnlivan - City Manager’s Office

   Absent- Rick Pearce

2. Approval of the November minutes / December NO MEETING due to lack of quorum. - Betsy motioned, Stefan 2nd

3. Old Business
   a. Middletown Community Foundation - assets account- moved 20K into the Foundation’s portfolio.
   b. Application for 501c3 status (IN PROGRESS)
   c. Legislative language to change who has to collect lodging tax - 1+ rooms (ON HOLD till 2020) We want to address the quantity of rooms that qualify for the lodging tax. Shelby suggested we move forward.
   d. AirBnB contract (IN PROGRESS)

4. New Business
   a. Review and vote on 2020 sponsorships - See Handout- Betsy motioned to hold excess money till march to decide where to use it, Heather 2nd it all in favor
   b. Treasurer’s Report
      i. Budget To date Overview - Lindsey explained the P&L report, we will be receiving the lodging tax quarterly instead of twice a year.
      ii. City Finance Director meeting recap- Mary, Shelby, and Lindsey met with Jake to see if the lodging tax form could be revised to have more questions answered to help MVB gauge how to improve our marketing.
      iii. Budget 2021 Discussion-
      iv. Financing moving forward (Riverway and % of lodging tax) We have two more years of commitment to the Riverway. We will discuss further at our strategy meeting in March.
   c. Executive Director’s Update
      i. 2020 Stakeholders Meeting - Recap- We had 45 guests at The Windamere. Mark Hecqet from the Butler County Visitors Bureau and a rep from Cinci Bell will have the the wifi installed in the next 90 days.
ii. Update on 2019 Goals - See Annual Report

iii. Visitors Guide - Shelby requested Mary send her the digital file of the annual report and visitors guide so she can share.

iv. Restaurant Challenge - Postcard coupon from Gracie’s, Cibo y Vino, and Swire for a free app or dessert. Hotels ran out of postcards but low redemption. Waiting two months to see how we proceed.

v. Google Segments Update - Mary is working with a consultant to figure out how to better position the MVB

vi. Strategy Session - in March Include stakeholder guests

vii. Thrive in the Hive event - Women entrepreneur workshop/promoting available spaces. This is not inline with MVB’s mission. This event

d. Board Business

   i. Spooky Nook - Mica visited in Nov and gave an overview of the facility and the impact on downtown Lancaster businesses.

   ii. Geo cashing - Middletown is missing out on this great outdoor activity that is very popular. Mary is interested in partnering with groups to increase the number of geocaches.

   iii. Homework: Board Blog Posts (1 each) - should have received a calendar invite

   iv. Google Review of MVB - please submit one

v. 2020 Officers discussion and vote

vi. Executive Directors 2019 Bonus - vote based on executive committee review. Betsy motioned we go into Executive Session at 7:18.

   ED 2018 Bonus Recommendation – DeAnna motioned to give Mary a 15% bonus based on her 2019 salary of $53,812 which is $7668.21. Annual 2019 COLA for ED- Deanna motioned to award Mary a 1.6% COLA for her 2020 salary, and a 1.9 for performance which $1883.42. This makes her total salary with bonus $55695.42 Lindsey 2nd, all in favor.

5. Liaison Updates

   a. Update from Shelby, Middletown City staff liaison - City Manager applications are due at the end of the year. Economic Development will be in place hopefully by the end of the summer. Soapbox Media is a group that handles the storytelling of a community. Shelby is taking the reins and looking for a partnership.

6. Adjournment - Betsy called the meeting adjourned 7:37

NEXT MEETING: STRATEGY ALIGNMENT - March 16th 2020 - Chamber Conference Room
1. Roll Call

   Officers: Elizabeth Hanavan, President - Lyndsey Pittman, Treasurer - Mica Glaser Jones, Secretary - Mary Huttlinger, Executive Director. At Large: Stefan Wannemacher, DeAnna Shores, Heather Mason, Rick Pearce

   Liaisons: Shelby Quinlivan - City Manager’s Office, Ami Vitori - City Council Liaison (BOLD indicates absent)

2. Approval of the January minutes - Stefan motioned to approve, Heather seconded

3. Old Business
   a. Application for 501c3 status (IN PROGRESS) Slow moving due to COVID 19
   b. Legislative language to change who has to collect lodging tax - 1+ rooms (Sent email to City MGR) MAH to follow up with City
   c. AirBnB contract (IN PROGRESS) Slow moving due to COVID 19
   d. Review and vote on 2020 sponsorships (ON HOLD)
   e. Financing moving forward (Riverway and % of lodging tax) (Summer Budget Discussion/Ami/Sent email) MAH to follow up with the City
   f. Strategy Session (ON HOLD)
   g. Geocaching (Rick suggested to MOVE FORWARD with this initiative)

4. New Business
   a. Budget Discussion
      i. Lease Update (Moving to Windamere)
      ii. Social Media Contractor Update (Annie furloughed until MVB has a better understanding of financial impact of COVID 19)
      iii. Temporary Adjustment in Mission of organization (VOTE) Approved - Stefan motioned to approve, Betsy seconded, All in favor
      iv. RV hook-ups at Smith Park - Rick mentioned the food trucks use these, but questioned if there were sewer connections, MAH to reach out to Parks and ask
   b. Executive Director’s Update
      i. Audit - MVB notified that the audit will begin shortly
      ii. Call to Action - OTA Travel Report Summary - review of the OTA ppt and invited Board members to sit in on the next call
      iii. Tourism & MVB Update - MAH focusing on promoting who is open, and celebrating MVB attractions and assets
      iv. BINGO Challenge - over 500 registrants - 23 winners
      v. Mural Walking Tour - working with a committee to back fill the information and additional photos
vi. Middletown Activity Guide - in progress to be made available online for downloading
vii. Zoom Background - MVB and Middletown backgrounds (shared with City & Riverway)
viii. Social Media Stickers (and challenge) - launched MID stickers to use
ix. Dining Resources - keep this updated and share with lists
x. MVB Gift Card - designed an ordered a generic MVB gift card so MAH wasn’t always running around getting cards from businesses for contests and giveaways
xi. Heartland Update - overview of learnings, benefits, and next steps
xii. Social Media Tips to MVB Internal Comms Group - launch weekly updates and tips

c. Board Business
   i. Homework: Board Blog Posts (1 each) - should have received a calendar invite
      1. Highest performing blog posts to date
   ii. Google Review of MVB - please submit one

d. Open Discussion

5. Liaison Updates
   a. Update from Shelby, Middletown City staff liaison - City Manager Search, new DIR of Economic Development, Shelby Baby, Riverway activities, Fireworks still be considered for July

NEXT MEETING: STRATEGY ALIGNMENT - May 18th 2020 via Google Meet https://meet.google.com/kzt-kwzp-tnm
MINUTES
Middletown Visitors Bureau - Board of Directors Monthly Meeting
May 19 2020, at 6 p.m.
Location: Google Meet - use this link to join - https://meet.google.com/kzt-kwzp-tnm

1. Roll Call

Officers: Elizabeth Hanavan, President - Lyndsey Pittman, Treasurer - Mica Glaser Jones, Secretary - Mary Huttlinger, Executive Director. At Large: Stefan Wannemacher, DeAnna Shores, Heather Mason, Rick Pearce
Liaisons: Shelby Quinlivan - City Manager's Office, Ami Vitori - City Council Liaison

Absent - Mica Glaser Jones, Shelby Quinlivan, Ami Vitori

2. Approval of the April minutes - Stefan motioned to approve, Betsy seconded

3. Old Business
   a. Application for 501c3 status (IN PROGRESS)
   b. Legislative language to change who has to collect lodging tax - 1+ rooms (Sent email to City MGR)
   c. AirBnB contract (IN PROGRESS)
   d. Review and vote on 2020 sponsorships (ON HOLD)
   e. Financing moving forward (Riverway and % of lodging tax) (Summer Budget Discussion/Ami/Sent email)
   f. Strategy Session (ON HOLD)
   g. Geocaching Update

4. New Business
   a. Budget Discussion
      i. Budget To Date Review - on track but below spending plans due to COVID, audit review
   b. Executive Director's Update
      i. Audit on track, no red flags
      ii. Mural Walking Tour, working with artists and photographers, securing drone footage and language for mural background
      iii. Middletown Activity Guide - completed, will release in the Fall and will have annual updates
      iv. Geocaching - planning for a July release
      v. MVB Gift Card - design so MVB can just generic card for prizes, give-a-ways - saves time
      vi. Start Skydiving - any update from the City?
      vii. Events (Hot Air Balloon, Fireworks, WWCW, Pickleball) - only Pickleball still on
      viii. Social Media Tips to Internal MVB Group - not much activity in this group, ask businesses what would be helpful
   c. Board Business
      i. Open Discussion

5. Liaison Updates
a. Update from Shelby, Middletown City staff liaison (Chris Xeil Lyons, Economic Development Director) - neither present for meeting or update

NEXT MEETING: June 15th - 6pm
Minutes
Middletown Visitors Bureau - Board of Directors Monthly Meeting
June 15 2020, at 6 p.m.
Location: Google Meet - use this link to join - https://meet.google.com/foa-kkwu-iwx

Mica M Glaser Jones
Board Secretary

Mary Huttlinger
Executive Director

1. Roll Call- Meeting called at 6:06pm

   Officers: Elizabeth Hanavan, President - Lyndsey Pittman, Treasurer - Mica Glaser Jones, Secretary - Mary Huttlinger, Executive Director. At Large: Stefan Wannemacher, DeAnna Shores, Heather Mason, Rick Pearce
   Liaisons: Chris Xeil - City Manager’s Office, ABSENT Ami Vitori - City Council Liaison ABSENT

2. Approval of the April minutes Mica motioned to approve the minutes, Stefan seconded, all approved.

3. Old Business
   a. Application for 501c3 status (IN PROGRESS)
   b. Legislative language to change who has to collect lodging tax - 1+ rooms (Sent email to acting City MGR)
   c. AirBnB contract (IN PROGRESS) waiting for new City Manager before moving forward
   d. Review and vote on 2020 sponsorships (ON HOLD) Pickleball tourny is still on. Deanna motioned to approve sponsorship up to $750, Betsy 2nd, all in favor. A lot of other events have been cancelled including Hops in the Hangar.
   e. Financing moving forward (Riverway and % of lodging tax) (Summer Budget Discussion/Ami/Sent email)
      Riverway payment of $12,000 is coming due at the end of June and Mary is asking the City to honor the agreed upon %.
   f. Strategy Session- possibly rescheduled to Sept or October
   g. Mary COLA-

4. New Business
   a. Budget Discussion
      i. Budget To Date Review- Lyndsey went over the budget and commended Mary for making adjustments to the budget to get us in a good position.
   b. Executive Director’s Update
      i. Audit- in the process of a condensed audit, cost of $2,000 which was in the budget
      ii. Mural Walking Tour- Getting very close to launching. This can be a virtual or actual walking tour. The Google map has links and photos for each mural. Partnered with MHS and ACF to get background and history.
      iii. Middletown Activity Guide- fun guide for kids to do activities
      iv. Geocaching- Starting July 1st with the first 30 days there will be badges, unique trackables, and caches and prizes. This will be ongoing after July.
      v. MV Gift Card- stores can receive the gift certificate and Mary will reimburse.
      vi. Bingo Update- 300 daily active daily players, 500 registered players
      vii. Open Posters- businesses can hang in storefronts to show we are open and safe
viii. **Restaurant Passport**- participants have to visit a certain % of restaurants and once they are done they will be entered to win gift cards and prizes

ix. **Start Sky Diving**- no update

x. **Baab Kayaking**- Mary had 24 people go kayaking Sunday and everyone had a great time. A professional photographer was hired to take pics of the kayakers, sky divers, and downtown businesses.

xi. **Events** (Hot Air Balloon, Fireworks, WWCW, Pickleball)

xii. **Social Media Tips to Internal MVB Group**- Mary will try reaching out to the FB Downtown Business and building owners page

xiii. **Pickleball Tournament**- see above for sponsorship

xiv. **Great Miami Riverway** - focusing on riverway safety

c. **Board Business**
   i. Board Members for 2021
   ii. Executive Session called by Betsy at 7:03-
      Discuss ED COLA- 2.6% approved as of January 1, 2020.

**NEXT MEETING: July 20th virtual meeting**
Minutes
Middletown Visitors Bureau - Board of Directors Monthly Meeting
July 20 2020, at 6 p.m.
Location: Google Meet - use this link to join - https://meet.google.com/pea-kowa-dr

Mica M. Glaser Jones
Board Secretary

Mary Huttlinger
Executive Director

1. Betsy called the meeting to order at 6:02pm
2. Roll Call

Officers: Elizabeth Hanavan, President - Lyndsey Pittman, Treasurer - Mica Glaser Jones, Secretary - Mary Huttlinger, Executive Director. At Large; DeAnna Shores, Heather Mason, Rick Pearce Liaisons: Chris Xeil Lyons City Economic Director - City Manager’s Office, Ami Vitori - City Council Liaison, City Manager- Jim Palenick Absent- Stefan Wannemacher

3. Approval of the June minutes: Betsy moved to accept the minutes Lyndsey 2nd, all in favor
4. Old Business
   a. Application for 501c3 status (IN PROGRESS) waiting to have a meeting with the new City Manager to move forward.
   b. Legislative language to change who has to collect lodging tax - 1+ rooms (Sent email to acting City MGR, follow up with new City Manager)
   c. AirBnB contract (ON HOLD)
   d. Financing moving forward in light of COVID (Meeting with Chris Xeil TBD- The City has agreed to pay for half of the Riverway cost to an amount of $6000.
   e. Strategy Session (October) - Will decide in September when and where
5. New Business
   a. Budget Discussion
      i. Budget To Date Review- Audit is way behind schedule and Mary hasn’t had the opportunity to get caught up.
      ii. Financing moving forward in light of COVID- With the $6000 from the City for the Riverway helps with the budget.
   b. Executive Director’s Update
      i. Audit- taking longer than expected, hoping to have wrapped up by next month
      ii. Mural Walking Tour - Jeremy Loukinas provided overhead drone footage of the murals, waiting on info from Sam Ashworth. Ready to launch here very soon with a social media blast.
      iii. Middletown Activity Guide - Rolling out in the fall and break it out to ‘20, ‘21, ‘22
      iv. Geocaching Update -
         1. Social media gold- 975 interested
         2. 275 shares
         3. over 60,000 people reached
         4. Interest from Cinci, Indy, Columbus, and Pennsylvania,
5. VISITORS- Michigan, Canada, Iowa, Kentucky, Indiana, Pennsylvania, New Mexico, California
   6. Families- groups 4-6
   7. over 900 logs
   8. Visited Middletown businesses
   9. Creates destination location
   10. Buzz in geocache community

   v. Geocaching Next Steps- trail will still be going on but the prizes will not for now. Possibly add 2-3 new caches this fall.

   vi. Geofencing Marketing - Mary has been collaborating with Jeff from DMI about how we can utilize geofencing to benefit downtown and the city for when we get back to having events. There are two meetings scheduled with consultants to get more information.

   vii. Open Posters - MVB supplied and DMI helped distribute to businesses. May need to order more.

   viii. Baabs Kayaking - They are doing very well and have partnered with MVB to allow us to have visitors' guides and coupons.

   ix. Pickleball Tournament- Traditionally they get 200-250 but at this time they are over 300 participants and have added 2 more courts. MVB will have a tent set up with info. Tournament is July 30-Aug 2.

   x. Great Miami Riverway - Mary sat in on a board meeting and reported that they are relying on social media heavily. Smallmouth bass tourney

   xi. Campground- moving along with utilities, Chris Xeil will check on progress and report back

   xii. Window branding at The Windamere located on the back of the building in the drive thru area will have brochure holders for visitor’s guides and coupons

   c. Board Business
      i. Open Discussion- Ami Vitori inquired about the Hillbilly Elegy release and how we will promote.
      ii. Board Members for 2021 - John Ferrando, Michell Cook. Any other nominations can be emailed to Mary for consideration.

6. Liaison Updates
   a. Update from Chris Xeil Lyons, Economic Development Director- shared her background and the 6 areas that her department is focusing on.
   b. City Manager Jim Palenick introduced himself and shared his goals and the areas he plans on focusing on

Betsy called the meeting adjourned at 5:54pm

NEXT MEETING: September 21st
MINUTES
HISTORIC COMMISSION
May 7, 2020

TYPE: Regular Meeting
PLACE: VIA ZOOM CONFERENCE MEETING

MEMBERS PRESENT: Jeremy Loukinas Nancy Romero Roger Daniel
Andy Brickler Matthew Dixon Joanne Mejias
James Stabler

STAFF PRESENT: Annette Accurso, Historic Property Specialist
Austin Eidemiller, Zoning Inspector
Ashley Combs, Planning Director

OTHERS PRESENT: Theron & Mica Jones
Samuel & Brandi Cornwall

Ms. Romero called the Historic Commission meeting to order at 5:30pm and Ms. Combs called the roll. All of the Historic Commission members were present. A quorum was present for the meeting.

APPROVAL OF MINUTES – DECEMBER 12, 2019

Ms. Romero presented the December 19, 2020 Historic Commission meeting minutes and asked if there were any needed corrections. Seeing none, a motion was made and seconded to accept the December 19, 2019 meeting minutes as presented.

CERTIFICATE OF APPROPRIATENESS – CENTRAL AVENUE DISTRICT
15 N. CLINTON STREET - SIGNAGE

Ms. Romero introduced the Certificate of Appropriateness as a request for the property located at 15 N. Clinton Street for signage and asked for the staff report.

Ms. Accurso presented the staff report using a PowerPoint presentation. Ms. Combs explained the background of the building and that is constructed of concrete block, nearly covering the entire parcel. It has housed a variety of uses in the past as well as periods of vacancy, from a Goodwill Store, to engine rebuilders in the mid-1990’s to an office furniture store in 2000-2002, and in the mid-2000’s as a sporting attire store and batting cage facility. It is now used as an office for Digital Visuals Inc. and retail space for Antiques the Gallery on Clinton. Ms. Accurso stated the last approval for the property was in July 2009 for doors, awning with signage, and wall signage for Digital Visuals business.

Ms. Accurso showed pictures of the property and photos submitted.

Ms. Accurso stated the applicant is proposing the following work:
- Install signs on the Southwest corner and Southwest rear corner
- Digital print premium vinyl with lamination signs (120” width x 48”
Mounted to 3mm aluminum composite board
- East Rear sign – Directly mounted to the building with concrete fasteners
- Southwest sign – Directly mounted to the building with concrete fasteners

Ms. Accurso displayed pictures of the proposed signage.

Ms. Accurso stated per the National Park Service Guidelines:
- Signs should work with the building, rather than against it.
- New signs should respect the size, scale and design of the historic building.
- Sign placement is important: new signs should not obscure significant features of the historic building. New signs should also respect neighboring buildings. They should not shadow or overpower adjacent structures.
- Sign materials should be compatible with those of the historic building. Materials characteristic of the building's period and style.
- New signs should be attached to the building carefully, both to prevent damage to historic fabric, and to ensure the safety of pedestrians.

Ms. Accurso stated per the Middletown Development Code:
No person shall carry out any exterior alteration, restoration, reconstruction, demolition, new construction or moving of a historic landmark or property within a historic district, nor shall any person make any material change in appearance of such property, its light fixtures, signs, awnings, windows, siding, roof, doors, shutters, sidewalks, fences, walls, retaining walls, steps, paving, or other exterior elements which affect the appearance and cohesiveness of the historic landmark or historic district, without first obtaining a certificate of appropriateness from the Historic Commission or Development Code Administrator, as applicable.

Ms. Accurso explained per Chapter 1220: Signage
Wall signs shall be mounted on or flush with a wall and shall not protrude more than 18 inches from the wall or face of the building to which it is attached. Wall signs shall not include electronic message centers. Shed noted that wall signs located in the UC-C District may only be illuminated through the following methods, if approved as part of the Certificate of Appropriateness: Indirect lighting methods such as gooseneck lighting; Individual reverse channel letters (halo-lit or reverse-lit); or Individual channel letters with transparent plastic covering to shield the source of illumination.

Ms. Accurso noted that per the amount of wall signage permitted in the UC Zoning District for buildings with multiple tenants is 1.5 square foot of sign area per lineal foot of road frontage. The sign proposed will meet the Development Code regulation.

Ms. Accurso stated that the project will require Building and Zoning Department permits. Ms. Accurso concluded her staff report.

Ms. Romero asked the commission if there were any questions for staff. See none, Ms. Romero opened the meeting to the public to speak for or against the application. Seeing none, Ms. Romero closed the public hearing and asked for staff's recommendation.
Ms. Accurso stated that staff recommends approval of the Certificate of Appropriateness as submitted for 15 N. Clinton Street based on the staff report and application provided and compliance with the National Park Service guidelines.

A motion was made by Mr. Daniel and seconded by Mr. Stabler to approve the application as submitted. The motion was approved unanimously by the commission.

**CERTIFICATE OF APPROPRIATENESS – HIGHLANDS HISTORIC DISTRICT**

**310 THE ALAMEDA – ROOF REPLACEMENT**

Ms. Romero introduced the Certificate of Appropriateness as a request for the property located at 310 The Alameda for the replacement asbestos shingles for asphalt shingles which give the appearance of slate and asked for the staff report.

Ms. Accurso explained the property history stating that August X and Lucy Schwebal purchased the land from the Paul Sorg Realty Company and they resided there from April 4th 1928 until July 26th 1938. The current owners purchased it on July 8th, 2013. It is a Tudor house with white stucco and dark wood trim, with a façade predominately stone. Ms. Accurso stated that there was no prior approvals on file.

Ms. Accurso stated the applicant is proposing the following work:
She explained that the existing shingles are asbestos; the owners have chosen a Certain Teed shingle, of the New England Slate style. The shingles give the appearance of slate rather than the traditional style.

Ms. Accurso displayed photos of the property and proposed work.

Ms. Accurso explained per Middletown Development Code:
No person owning, renting, or occupying property which has been designated a landmark or which is situated in a designated historic district shall carry out any exterior alteration, restoration, reconstruction, demolition, new construction or moving of a historic landmark or property within a historic district, nor shall any person make any material change in appearance of such property, its light fixtures, signs, awnings, windows, siding, roof, doors, shutters, sidewalks, fences, walls, retaining walls, steps, paving, or other exterior elements which affect the appearance and cohesiveness of the historic landmark or historic district, without first obtaining a certificate of appropriateness from the Historic Commission or Development Code Administrator, as applicable.

Ms. Accurso note that no permits for zoning, building or demolition shall be issued without first obtaining a certificate of appropriateness.

Ms. Accurso read that per Middletown Development Code:
No permits for zoning, building or demolition shall be issued without first obtaining a certificate of appropriateness.

(g) COA Design Review Criteria
Decisions on a COA application shall be based on consideration of the following criteria:
(1) A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
(2) The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
(3) Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
(4) Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
(5) Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.
(6) Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.
(7) Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
(8) Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.

Ms. Accurso stated that per Secretary of the Interior Guidelines for the Treatment of Roof Replacement: Replacing in kind an entire roof covering or feature from the restoration period that is too deteriorated to repair, (if the overall form and detailing are still evident) using the physical evidence as a model to reproduce the feature or when the replacement can be based on historic documentation. Examples of such a feature could include a large section of roofing, a dormer, or a chimney. If using the same kind of material is not feasible, then a compatible substitute material may be appropriate.

Ms. Accurso stated a building permit is required for the roof replacement.

Ms. Accurso concluded her staff report.

Ms. Romero asked the commission if there were any questions for staff. See none, Ms. Romero opened the meeting to the public to speak for or against the application. Seeing none, Ms. Romero closed the public hearing and asked for staff’s recommendation.

Ms. Accurso stated that staff recommends approval of the Certificate of Appropriateness as submitted for 310 The Alameda based on the staff report and application provided and compliance with the National Park Service guidelines.
A motion was made by Ms. Mejias and seconded by Mr. Brickler to approve the application as submitted. The motion was approved unanimously by the commission.

CERTIFICATE OF APPROPRIATENESS – HIGHLANDS HISTORIC DISTRICT
2700 CENTRAL AVENUE – ATTIC WINDOW REPLACEMENT

Ms. Romero introduced the Certificate of Appropriateness as a request for the property located at 2700 Central Avenue for the replacement asbestos shingles for replacement windows for the attic and asked for the staff report.

Ms. Accurso explained the property history stating that the house is known as the Ohmer Cecil House a 1924 Colonial built for the owner who resided there from October 23, 1923 to December 13, 1942. It is brick, with wood trim, and what could be called sun rooms on either end of the structure, lending balance and style typical of the Colonial style. Two windows on either side and one centered over the top of the front entry porch and door. The windows are multiplane with shutters. There are roof dormers; and the pitch is medium. Ms. Accurso noted there were no other permits on file for the property.

Ms. Accurso explained the proposal of work:
She explained that the new owners propose the replacement existing attic windows with Jeld-Wen double hung, multipaned in a desert sand color. The window is suited for traditional style homes, with narrow stiles and rails. Grids are sealed between glass panes. Glass is energy efficient Low-E EC. "AuraLast" pine protects the wood against rot and termites for 20 years. Exterior is low maintenance aluminum cladding with a baked-on color finish; the color presented matches the existing color of the windows.

Ms. Accurso stated that per Middletown Development Code:
No person owning, renting, or occupying property which has been designated a landmark or which is situated in a designated historic district shall carry out any exterior alteration, restoration, reconstruction, demolition, new construction or moving of a historic landmark or property within a historic district, nor shall any person make any material change in appearance of such property, its light fixtures, signs, awnings, windows, siding, roof, doors, shutters, sidewalks, fences, walls, retaining walls, steps, paving, or other exterior elements which affect the appearance and cohesiveness of the historic landmark or historic district, without first obtaining a certificate of appropriateness from the Historic Commission or Development Code Administrator, as applicable.

Ms. Accurso displayed current property photos and pointed out the attic windows.

Ms. Accurso stated that per the Secretary of the Interior Guidelines for the Treatment of Replacement Windows: replacing in kind extensively deteriorated or missing components of windows when there are surviving prototypes, such as frames or sash, or when the replacement can be based on documentary or physical evidence. The new work should match the old in material, design, scale, color, and finish.

Ms. Accurso noted that no building permit is required for window replacement, as the
openings will not be resized.

Ms. Accurso concluded her staff report.

Ms. Romero asked the commission if there were any questions for staff. Seeing none, Ms. Romero opened the meeting to the public.

Ms. Romero asked the purpose of replacing the windows. The homeowner, Brandi Cornwall, stated that the windows are rotting from the inside and that there are several holes. They also noted that the air flow is very drafty.

Ms. Romero asked if they could be repaired. Ms. Cornwall stated that currently they cannot be and that there are anchors holding them together.

Mr. Bricker asked how many windows are being replaced. Ms. Cornwall stated that there were 3 windows in the front, 1 window on the side facing the alley and the window in the back of the home.

Mr. Loukinas asked about the windows in the lower portion of the home. Ms. Cornwall stated that all of the windows are made of wood. She added that they are not asking to replace those windows.

Ms. Romero asked if the grid patterns would be the same in the replacement windows. Ms. Cornwall stated that they would be the same.

Ms. Romero asked if there were any one else that would like to speak for or against the application. Seeing none, Ms. Romero closed the public hearing and asked for staff’s recommendation.

Ms. Accurso stated that staff recommends approval of the Certificate of Appropriateness as submitted for 2700 Central Avenue based on the staff report and application provided and compliance with the National Park Service guidelines.

A motion was made by Mr. Daniel and seconded by Mr. Loukinas to approve the application as submitted. The motion was approved unanimously by the commission.

CERTIFICATE OF APPROPRIATENESS – HIGHLANDS HISTORIC DISTRICT
503 SOUTH MAIN STREET – FENCE REPLACEMENT

Ms. Romero introduced the Certificate of Appropriateness as a request for the property located at 503 South Main Street for the replacement of fencing and asked for the staff report.

Ms. Accurso explained the property history stating the house is a Queen Anne style home, built in 1891. It has rusticated stone lintels. There exists a stone fence on the north side of the rear property, which will remain. She displayed a historic photo of the home and location map. Ms. Accurso noted that there were no previous permit approvals on file.
Ms. Accurso explained the proposal of work:
She explained that the owners have chosen the Veranda Carlsbad style, 6' tall by 8' wide, and vinyl lattice top panels.

Ms. Accurso stated that per Middletown Development Code:
No person owning, renting, or occupying property which has been designated a landmark or which is situated in a designated historic district shall carry out any exterior alteration, restoration, reconstruction, demolition, new construction or moving of a historic landmark or property within a historic district, nor shall any person make any material change in appearance of such property, its light fixtures, signs, awnings, windows, siding, roof, doors, shutters, sidewalks, fences, walls, retaining walls, steps, paving, or other exterior elements which affect the appearance and cohesiveness of the historic landmark or historic district, without first obtaining a certificate of appropriateness from the Historic Commission or Development Code Administrator, as applicable.

Ms. Accurso displayed photos of the current fencing and proposed materials.

Ms. Accurso stated that per the Secretary of the Interior Guidelines for the Treatment of Settings (District/Neighborhood): Identifying, retaining and preserving building and landscape features that are important in defining the overall historic character of the setting. Such features can include circulation systems, such as roads and streets; furnishings and fixtures, such as light posts or benches; vegetation, gardens and yards; adjacent open space, such as fields, parks, commons, or woodlands; and important views or visual relationships. Replacing in kind an entire building or landscape feature in the setting that is too deteriorated to repair (if the overall form and detailing are still evident) using the physical evidence as a model to reproduce the feature. If using the same kind of material is not feasible, then a compatible substitute material may be considered.

Ms. Accurso also noted that this was her staff recommendation.

Ms. Accurso explained that there would be a Zoning permit required for the fencing.

Ms. Accurso concluded her staff report.

Ms. Romero said that were was not sure if the Historic Commission has approved vinyl fence in the past. Although she stated she didn't have an issue with it since they would not be replacing a historic fence with new.

Mr. Daniel asked if the entire fence was vinyl or other materials. The property owner, Mica Jones, stated that it was entirely vinyl.

Ms. Romero asked if the fence would be wood color. Ms. Jones stated that it would have a wood color appearance and wood grain pattern to it.

Mr. Daniel stated that the fence would not be bright white like other fences downtown and it would appear as a wooden fence.
Ms. Romero asked if the fence would be shiny or a satin finish. Ms. Jones stated that the fence would not be a shiny fence it has a textured finish. She also noted that they did not want a shiny finish.

Ms. Romero asked if there were any one else that would like to speak for or against the application. Seeing none, Ms. Romero asked for a motion.

A motion was made by Mr. Daniel and seconded by Mr. Loukinas to approve the application as submitted. The motion was approved unanimously by the commission.

OLD/NEW BUSINESS

- Certified Local Government Status - Ms. Combs stated that the City is still waiting to hear back regarding the approval for the CLG status. She noted that the State Historic Preservation Office submitted the CLG application the National Register in late April.
- Ms. Combs welcomed the new Historic Property Specialist, Annette Accurso. The Historic Commission welcomed Annette.

ADJOURNMENT

With no further discussion a motion was made by Mr. Daniel to adjourn the meeting at 6:15PM. The motion was approved unanimously through roll call.

Nancy Romero
Chairwoman

Annette Accurso
Historic Property Specialist
MINUTES
HISTORIC COMMISSION
May 28, 2020

TYPE: Regular Meeting
PLACE: VIA ZOOM CONFERENCE MEETING

MEMBERS PRESENT: Jeremy Loukinas Nancy Romero Roger Daniel
Andy Brickler Matthew Dixon Joanne Mejias
James Stabler

STAFF PRESENT: Annette Accurso, Historic Property Specialist
Austin Eidemiller, Zoning Inspector
Ashley Combs, Planning Director

OTHERS PRESENT: Larry Mulligan

Ms. Romero called the Historic Commission meeting to order at 5:30pm and Ms. Combs called the roll. All of the Historic Commission members were present. A quorum was present for the meeting.

APPROVAL OF MINUTES – MAY 7, 2020

Ms. Romero presented the May 7, 2020 Historic Commission meeting minutes and asked if there were any needed corrections. Seeing none, a motion was made and seconded to accept the May 7, 2020 meeting minutes as presented.

CERTIFICATE OF APPROPRIATENESS – SOUTH MAIN HISTORIC
115 SOUTH MAIN STREET – NEW CONSTRUCTION - TIM PFAFF

Ms. Romero introduced the Certificate of Appropriateness as a request for the property located at 115 South Main Street for a pool and asked for the staff report.

Ms. Accurso presented the staff report using a PowerPoint presentation.

Ms. Accurso explained it was built in 1867 for Dr John Corson, and later the home of Victor Hatfield, founder of Hatfield Coal and Supply, the house is a carpenter gothic style, which still has remnants of the gingerbread ornamentation on the front porch, strong vertical design elements and a steeply pitched roof.

Ms. Accurso displayed a photo of the home.

Ms. Accurso explained the approval history from Historic Commission:
- July 23, 2015 – Installation of wood privacy fence
- January 25, 2018 – Removal of a storm door, garage construction and Installation of a driveway off the alley
- April 18, 2018 – Installation of 10’X20’ Shed
- October 25, 2018 – Completion of gates to match privacy fencing.
Ms. Accurso presented the proposal of work. She stated that the owner wishes to add the pool within the existing fenced yard, which appears to be 6’ privacy constructed of wood, and will have two locking gates. The proposed location is determined to be 15-20’ from the rear of the house, several feet from property and electric lines.

Ms. Accurso displayed a site plan where the pool is proposed to be located.

Ms. Accurso stated that per Middletown Development Code 1228.06(b)(1):
No person owning, renting, or occupying property which has been designated a landmark or which is situated in a designated historic district shall carry out any exterior alteration, restoration, reconstruction, demolition, new construction or moving of a historic landmark or property within a historic district, nor shall any person make any material change in appearance of such property, its light fixtures, signs, awnings, windows, siding, roof, doors, shutters, sidewalks, fences, walls, retaining walls, steps, paving, or other exterior elements which affect the appearance and cohesiveness of the historic landmark or historic district, without first obtaining a certificate of appropriateness from the Historic Commission or Development Code Administrator, as applicable.

Ms. Accurso read the requirements per Development Code Section 1226.08:
(g) COA Design Review Criteria Decisions on a COA application shall be based on consideration of the following criteria:
(1) A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
(2) The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
(3) Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
(4) Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
(5) Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.
(6) Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.
(7) Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible. (8) Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
(9) New additions, exterior alterations, or related new construction shall not destroy
historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.

(10) New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

(11) The proposed development is in compliance with all the requirements of this code and other related codes and ordinances enforced by the City;

(12) Properties which contribute to the character of the historic district shall be retained, with their historic architectural features intact and altered as little as possible;

(13) Any alteration of an existing property shall be compatible with its historic character, as well as with the surrounding district;

(14) New construction shall be compatible with the district in which it is located;

(15) The application demonstrates compliance with any historic guidelines or policies adopted by the Historic Commission that are applicable to the subject application;

(16) In determining compatibility the Historic Commission shall consider the following:

A. The general design, character, and appropriateness to the property of the proposed alteration or new construction;

B. The scale of the proposed alteration or new construction in relation to the property itself, surrounding properties, and the neighborhood;

C. The texture, materials, and color and their relation to similar features of other properties in the neighborhood;

D. The visual compatibility with surrounding properties, including proportion of the properties façade, roof shape, and the rhythm of spacing of properties on streets, including setback; and

E. The importance of historic, architectural, or other features to the significance of the property.

F. Traditional building materials such as wood, brick, metal, or stone shall be used for construction, reconstruction, exterior alteration, or other exterior structure or site element change. Modern man-made materials may be utilized at the discretion of the Commission if the proposed project keeps in character with the existing building, site, area structures, and any applicable design guidelines.

G. For new construction and additions, the structure's width, height, surrounding setbacks and style shall be considered in relationship to adjacent structures. This relationship between structures shall allow for consistency of style, size and density in each given neighborhood area.

H. Where possible, elements which can contribute to the quality of the pedestrian environment and other public amenities should be promoted. Included among these may be benches, water features, seating areas, arcades, awnings or canopies.

Ms. Accurso stated the Secretary of the Interior Guidelines for the Treatment of Roof Replacement: New construction should be appropriately scaled and located far enough away from the historic building to maintain its character and that of the site and setting. In urban or other built-up areas, new construction that appears as infill within the existing pattern of development can also preserve the historic character of the building, its site, and setting.
Ms. Accurso noted that permits are required for zoning and building departments before issuing a certificate of appropriateness.

Ms. Accurso concluded her staff report.

Ms. Romero asked the commission if there were any questions for staff. See none, Ms. Romero opened the meeting to the public to speak for or against the application. Seeing none, Ms. Romero closed the public hearing and asked for staff’s recommendation.

Ms. Accurso stated that staff recommends approval of the Certificate of Appropriateness as submitted based on the staff report and application provided and compliance with the National Park Service guidelines.

A motion was made by Mr. Loukinas and seconded by Mr. Stabler to approve the application as submitted. The motion was approved unanimously by the commission.

CERTIFICATE OF APPROPRIATENESS – SOUTH MAIN HISTORIC DISTRICT
218 SOUTH MAIN STREET – REPAIR/RENOVATION
Ms. Romero introduced the Certificate of Appropriateness as a request for the property located at 218 South Main and asked for the staff report.

Ms. Accurso explained the applicant is requesting the following:
1. The replacement of a roof, using the same asphalt material, but choosing a slate like dimensional style.
2. Replace doors on the garage to match the style of the rear door of the house.
3. Replace the remaining basement windows with glass block.

Ms. Accurso explained the property history:
She stated the home was built in 1875, and once known as the F.P. Lcelir House and the Calvin Verity Residence, it was the home of other members of the George M. Verity family through the years. The house and garage are a Victorian Italianate style, with eave brackets and hood molds over the rectangular windows. The entrance has a gable on an architrave, which is supported by the classic Ionic columns. The roof is low hipped, making the shingles a part of the overall appearance.

Ms. Accurso displayed a photo of the home.

Ms. Accurso explained the approval history:
July 19, 2018 - Demolition and repair of attached greenhouse
April 18, 2019 – Removal of swimming pool

Ms. Accurso explained the first proposal of work:
She explained that the owners wish to replace the existing 3-tab asphalt roof, which was installed approximately 30 years ago and is showing deterioration. Their shingle choice is an Owens Corning dimensional shingle with a slate-like look. She stated that the overall color will be grey.
Ms. Accurso displayed a photo of the proposed shingles.

Ms. Accurso explained the second proposal of work:
She explained the owners would like to replace two man-doors on the garage with new doors to match the rear door of the house. The rear door of the house was replaced in 2016, as approved by Historic Commission. The garage has 6/6 sash windows and the proposed door with similar fenestration will fit in with the style of the garage. The current door is wood slab, and is showing some deterioration. The replacement doors are steel with stamped panels.

Ms. Accurso explained the third proposal of work:
She explained that they are proposing the replacement of the basement windows with glass block. The current windows are deteriorating, and some have been removed for utility connections in the past. The new glass block windows will provide improved security and energy efficiency over the current windows.

Ms. Accurso displayed photos of the proposed window replacement locations.

Ms. Accurso displayed the Middletown Development Code 1228.06 (b)(1):
No person owning, renting, or occupying property which has been designated a landmark or which is situated in a designated historic district shall carry out any exterior alteration, restoration, reconstruction, demolition, new construction or moving of a historic landmark or property within a historic district, nor shall any person make any material change in appearance of such property, its light fixtures, signs, awnings, windows, siding, roof, doors, shutters, sidewalks, fences, walls, retaining walls, steps, paving, or other exterior elements which affect the appearance and cohesiveness of the historic landmark or historic district, without first obtaining a certificate of appropriateness from the Historic Commission or Development Code Administrator, as applicable.

Ms. Accurso displayed Development Code Section 1226.08:
(g) COA Design Review Criteria Decisions on a COA application shall be based on consideration of the following criteria:
(1) A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
(2) The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
(3) Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
(4) Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
(5) Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.
(6) Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.

(7) Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible. (8) Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.

Ms. Accurso explained per Development Code Section 1226.08 Cont'd:

(9) New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.

(10) New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

(11) The proposed development is in compliance with all the requirements of this code and other related codes and ordinances enforced by the City;

(12) Properties which contribute to the character of the historic district shall be retained, with their historic architectural features intact and altered as little as possible;

(13) Any alteration of an existing property shall be compatible with its historic character, as well as with the surrounding district;

(14) New construction shall be compatible with the district in which it is located;

(15) The application demonstrates compliance with any historic guidelines or policies adopted by the Historic Commission that are applicable to the subject application;

(16) In determining compatibility the Historic Commission shall consider the following:

A. The general design, character, and appropriateness to the property of the proposed alteration or new construction;

B. The scale of the proposed alteration or new construction in relation to the property itself, surrounding properties, and the neighborhood;

C. The texture, materials, and color and their relation to similar features of other properties in the neighborhood;

D. The visual compatibility with surrounding properties, including proportion of the properties façade, roof shape, and the rhythm of spacing of properties on streets, including setback; and

E. The importance of historic, architectural, or other features to the significance of the property.

F. Traditional building materials such as wood, brick, metal, or stone shall be used for construction, reconstruction, exterior alteration, or other exterior structure or site element change. Modern man-made materials may be utilized at the discretion of the Commission if the proposed project keeps in character with the existing building, site, area structures, and any applicable design guidelines.

G. For new construction and additions, the structure's width, height, surrounding setbacks and style shall be considered in relationship to adjacent structures. This relationship between structures shall allow for consistency of style,
size and density in each given neighborhood area.

H. Where possible, elements which can contribute to the quality of the pedestrian environment and other public amenities should be promoted. Included among these may be benches, water features, seating areas, arcades, awnings or canopies.

Ms. Accurso explained that per the Secretary of the Interior Guidelines:

1. Replacing in kind an entire roof covering or feature that is too deteriorated to repair (if the overall form and detailing are still evident) using the physical evidence as a model to reproduce the feature or when the replacement can be based on historic documentation. Replacing an incompatible roof covering or any deteriorated non-historic roof covering with historically-accurate roofing material, if known, or another material that is compatible with the historic character of the building.

2. Designing and installing a new entrance when an historic feature is missing or has previously been replaced by one that is incompatible. It may be an accurate restoration based on documentary and physical evidence, but only when the historic entrance coexisted with the features currently on the building. Or, it may be a new design that is compatible with the size, scale, material and color of the historic building.

3. Designing and installing a new window or its components, such as frames, sash and glazing, when the historic feature is completely missing. It may be an accurate restoration based on documentary and physical evidence, but only when the historic feature to be replaced coexisted with the features currently on the building. Or, it may be a new design that is compatible with the size, scale, material and color of the historic building.

Ms. Accurso stated the following permits are required: A building permit shall be issued for the roof. She stated that a building permit is also required for door replacement, when the openings will be resized.

Ms. Accurso concluded her staff report.

Ms. Romero asked the commission if there were any questions for staff. See none, Ms. Romero opened the meeting to the public to speak for or against the application. The property owner, Larry Mulligan, was present for questions. Seeing none, Ms. Romero closed the public hearing and asked for staff’s recommendation.

Mr. Loukinas asked if he had to recuse himself from the vote. Ms. Combs stated that Mr. Loukinas would not have to recuse himself due to no financial interest in the project.

Ms. Accurso stated that she would like to vote on each proposal separately.

1. Ms. Accurso stated that staff recommends approval of the Certificate of Appropriateness for the roof as submitted based on the staff report and application provided and compliance with the National Park Service guidelines.
   a. A motion was made by Mr. Stabler and seconded by Mr. Loukinas to approve the application for the roof as submitted. The motion was
approved unanimously by the commission.

2. Ms. Accurso stated that staff recommends approval of the Certificate of Appropriateness for doors as submitted based on the staff report and application provided and compliance with the National Park Service guidelines.
   a. A motion was made by Mr. Brickler and seconded by Mr. Daniel to approve the application for the roof as submitted. The motion was approved unanimously by the commission.

3. Ms. Accurso stated that staff recommends denial I of the Certificate of Appropriateness for the for the proposed glass block windows as submitted based on the staff report and application provided and compliance with the National Park Service guidelines. She noted that glass block windows have been denied by the commission.
   a. A motion was made by Mr. Stabler and seconded by Ms. Meijas to deny the application for the roof as submitted. The motion was approved unanimously by the commission.

The commission discussed with Mr. Mulligan different ideas for alternatives. Mr. Mulligan stated that he would be happy to come up with alternatives and come back to the Historic Commission.

OLD/NEW BUSINESS

- Certified Local Government Status – Ms. Accurso stated that the City is excited to have the certification. She stated that including Middletown there’s only 2,033 CLG communities in the United States! (77 in Ohio) She said that the department has established a relationship with the State Historic Preservation Office and National Park Service during the review processes. She stated that we’re looking forward to the opportunities it will bring to the City and the doors it will open (through special assistance/grant opportunities/education for the Historic Commission, etc.). She stated that the CLG certification will be a great asset for marketing, promoting, and revitalization tool for the City.

ADJOURNMENT

With no further discussion a motion was made and seconded to adjourn the meeting at 6:35PM. The motion was approved unanimously through roll call.

Nancy Romero
Chairwoman

Annette Accurso
Historic Property Specialist
PLANNING COMMISSION MINUTES
JULY 8, 2020

TYPE: Regular Meeting
PLACE: VIA ZOOM Conferencing
TIME: 6:00 P.M.

MEMBERS PRESENT: David McCauley-Myers    Gary Gross    Joanne Mejias
                  Paul Nenni          Todd Moore    John Langhorne
                  Joe Mulligan, Councilman

STAFF PRESENT: Ashley Combs, Planning Director
               Austin Eidemiller, Zoning Inspector

OTHERS PRESENT: Rachel Lewitt

CALL TO ORDER
Vice Chairman Gary Gross called the meeting to order at 6:00 pm and the roll was called by Ms. Combs. Ms. Mejias led the Planning Commission in the Pledge of Alliance.

APPROVAL OF PREVIOUS MEETING MINUTES
Ms. Mejias introduced the approval of the May 13, 2020 meeting minutes and asked if there were any needed changes. Seeing none, a motion was made by Mr. Nenni and seconded by Mr. Gross to approve the May 13, 2020 meeting minutes as presented.

PUBLIC HEARING:
CONDITIONAL CASE #2-20: 3224 ROOSEVELT BOULEVARD
Ms. Mejias introduced the case a request as a conditional use request by applicant Iglesia Adulam for a religious organization with worship services and bible school at the property located at 3224 Roosevelt Boulevard, Middletown, OH 45044. The property is located in the City’s B-2 Community Business District where religious places of worship are considered a conditional use and require review and approval by the Planning Commission.

Mr. Austin Eidemiller, Zoning Inspector, presented the case using a PowerPoint presentation.

Mr. Eidemiller displayed existing property photos and map of the property.

Mr. Eidemiller explained that the subject property is zoned B-2 Community Business Zoning District. Per the Middletown Development Code, the proposed use of a “Religious Places of Worship” and is considered a conditional use in the B-2 zoning district. The religious facility will also offer bible school.

Mr. Eidemiller read the standards for Cultural Facilities and Religious Places of Worship per the Middletown Development Code. A. All buildings shall be set back a minimum of 25 feet from all lot lines except in the UC District. B. New uses shall be on a lot with primary access on a major arterial, minor arterial, or Collector Street, as established in the Middletown Street Master Plan. The religious facility will be located in an existing building and is located along one of the City’s Major Arterial roads.
Mr. Eidemiller stated that the Development Code definition for Religious Institutions. He stated that a building, together with its accessory buildings and uses, where persons regularly assemble for religious worship and which building, together with its accessory buildings and uses, is maintained and controlled by a religious body organized to sustain public worship.

Mr. Eidemiller explained the Development Code parking requirement. He noted that Religious Places of Worship are required to provide one space per four fixed seats in the main assembly room or one space per four persons at maximum capacity, whichever is greater. The religious facility will be located inside an existing strip mall development and utilize the existing parking lot. Please see attached photos of the existing building and parking lot.

Mr. Eidemiller read the RLUIPA (Religious Land Use and Institutionalized Persons Act) regulations. He noted that the land use provisions of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. §§ 2000cc, et seq., protect individuals, houses of worship, and other religious institutions from discrimination in zoning and land marking laws. What does it mean for a local government to impose unreasonable limitations on a religious assembly, institution, or structure?

Mr. Eidemiller stated that RLUIPA prohibits land use regulations that “unreasonably limit” religious assemblies, institutions, or structures within a jurisdiction. One court has concluded that a municipality will violate this provision if its land use laws, or their application, deprive religious institutions and assemblies of reasonable opportunities to use and construct buildings within that jurisdiction. Another court has held that determination of reasonableness depends on a review of all of the facts in a particular jurisdiction, including the availability of land and the economics of religious organizations. Some courts have found unreasonable limitations where regulations effectively left few sites for construction of houses of worship, such as through excessive frontage and spacing requirements, or where zoning restrictions imposed steep and questionable expenses on applicants."

Mr. Eidemiller stated that per the City of Middletown Master Plan (2005):
Ms. Eidemiller explained that the area is identified as the Crossroads. A multi-faceted approach is required to stabilize the Crossroads development opportunity area. He stated that modernization/remodeling of existing retail shopping centers are needed. However, new development on underutilized portions of Crossroads is essential to bring new life and vitality to this area. He noted that new development should occur on large expanses of relatively unused portions of existing parking lots. Redevelopment should eliminate the mish-mash of uses visible from Roosevelt Boulevard. Buildings constructed at intersection corners and adjacent to the corridors should be multi-story and contain high quality building materials and architecture to create an enhanced sense of place at this strategic location. He pointed out that pedestrian amenities are necessary to encourage greater utilization.

Mr. Eidemiller explained that per the City of Middletown legal notice requirements, published notice was given 10 days before a public hearing VIA the Middletown Journal and written notice was provided to the applicant and all property owners contiguous and directly across the street or public right of-way of the subject property. He stated that surrounding properties had issues with the request, however, the issues were due to traffic and the City Engineer had no issues with the proposal. He stated that the property owner, Rachel Lewitt, called and gave her
support for the request.

Mr. Eidemiller stated that no other department comments have been received at this time.

Mr. Eidemiller explained the Conditional Use review criteria:
Decisions on a conditional use application shall be based on consideration of the following review criteria. All conditional uses shall be subject to review under the criteria of this section, as applicable, and may be subject to additional use-specific standards.
(1) The proposed conditional use is established as an allowed conditional use in the applicable zoning district;
(2) The proposed use is consistent with the spirit, purpose and intent of the master plan and the general purpose of this code;
(3) The proposed use complies with any use-specific standards as may be established for the use;
(4) Any building or structure constructed, reconstructed, or altered as part of a conditional use in a residential zoning district shall, to the maximum extent feasible, maintain the exterior appearance of residential buildings of the type otherwise permitted and shall have suitable landscaping, screening, and fencing wherever deemed necessary by the Planning Commission;
(5) The proposed use will comply with all applicable development standards, except as specifically altered by the Planning Commission in the approved conditional use;
(6) The proposed use will be harmonious with the existing or intended character of the general vicinity, and that such use will not change the essential character of the same area;
(7) The proposed use will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, or odors;
(8) The circulation on and access to the property shall be so designed as not to create an interference with traffic on surrounding public thoroughfares;
(9) The design of the buildings, structures, and site will not result in the destruction, loss or damage of a natural, scenic, or historic feature of major importance;
(10) The proposed use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district; and
(11) Wherever no specific areas, frontage, height, or setback requirements are specified in provision for a specific conditional uses, then such use shall be subject to the site development standards for the applicable zoning district.

Mr. Eidemiller noted the additional criteria and conditions:
(1) The Planning Commission shall be authorized to waive or modify requirements that apply to the conditional use as may be necessary to achieve compatible development with adjacent land areas as well as in the interest of the community in general where the Planning Commission finds that such waiver or modification will further the protection of the general welfare, protect individual property rights, and ensure that the conditional use will meet the intent and purposes of this code.
(2) The Planning Commission may also impose additional conditions, guarantees, and safeguards as it deems necessary to protect the general welfare and individual property rights, and to ensure that the conditional use will meet the intent and purposes of this code.

Mr. Eidemiller concluded his staff report.
Ms. Mejias asked if there were questions for staff before opening the public hearing. Seeing none, she opened the public hearing and invited anyone to participate who was to speak in favor of the project.

Rachel Lewitt, Property Owner, was sworn in by Mr. Gross to speak for the project.

Ms. Lewitt stated that she would be happy to answer any questions regarding the project.

Ms. McCauley-Meyers asked what days there would be services and hours. Ms. Lewitt stated that she was unsure and assumed that there would be services on Saturdays and Sundays as well as Wednesdays.

The Commission thanked Ms. Lewitt for her attendance.

Ms. Mejias asked if anyone else was in attendance to speak for or against the application. Seeing none, Ms. Mejias closed the public hearing.

Ms. Mejias asked for staff recommendation.

Mr. Eidemiller stated that based on materials submitted and Middletown Development Code’s Conditional Use Review Criteria, staff recommends approval of Conditional Use Case 2-20 for a conditional use to for a religious organization with worship services and bible school at the property located at 3224 Roosevelt Boulevard, Middletown, OH 45044.

Mr. Gross made a motion to approve staff’s recommendation. Mr. Laingcrne seconded the motion. The motion for approval carried unanimously through roll call.

NEW/OLD BUSINESS

Text Amendments – Mr. Eidemiller stated that proposed Text Amendments to the Middletown Development Code would be reviewed at the August 12, 2020 meeting.

BP Gas Station Sign – Mr. Eidemiller explained that the sign has an easement to the BP gas station property. The sign was not altered and is considered a non-conforming sign and can still be utilized. Per the Middletown Development Code the sign had a face change.

ADJOURNMENT

With there being no further business for the Planning Commission to discuss, a motion was made and unanimously approved by all Planning Commission members to adjourn at 7:38PM.

Joanne Mejias, Chairwoman

Ashley Combs, Planning Director

*The full meeting recording is available at the Planning & Zoning Department.*
August 4, 2020

TO: City Council
ATTN: Amy Schenck, Clerk of Council
FROM: Ashley Combs, Planning Director
SUBJECT: Final Record Plat – Sawyer’s Mill Section 3A

REQUEST
A request for final record plat approval for the Sawyer’s Mill Subdivision Section 3A by applicant Lori McElroy, with CESO. Section 3A of the Sawyer’s Mill Subdivision is a total of 15.0053 acres with a total of 51 single family homes. The Sawyer’s Mill Subdivision is a total of 122.41 acres with at total of 473 single family homes. The Sawyer’s Mill Amended Development Plan was approved by the City Planning Commission on September 11, 2019 and approved by the City Council on November 19, 2019.

Planning Commission recommended approval of the Sawyer’s Mill subdivision plat as submitted pending any comments and requirements by the City Engineering Department be fulfilled. Per the Ohio Revised Code, the process for final plat approval requires final approval by the City Council prior to recording with County Auditor.

If approved by City Council, the record plat of Sawyer’s Mill Subdivision Section 3A plat will be printed for signatures and recorded with the Warren County Auditor.

Please see attached final record plat for Sawyer’s Mill Subdivision Section 3A.

ALTERNATIVES
None

FINANCIAL IMPACT
None

EMERGENCY/NON-EMERGENCY
Consent Agenda

RECOMMENDATION
Approval of the final record plat for Sawyer’s Mill Subdivision Section 3A as submitted.

ATTACHMENTS
Final Record Plat - Sawyer’s Mill Subdivision Record Plat Section 3A
August 7, 2020

TO: Jim Palenick, City Manager
FROM: Brittany Grimes, Human Resources Specialist

SUBJECT: PROMOTIONAL APPOINTMENT – FIRE LIEUTENANT

We are recommending the promotional appointment of BRIAN PATTON to the position of Fire Lieutenant in the Department of Public Safety, Division of Fire. Mr. Patton was selected from the eligibility list as a result of Civil Service testing procedures. He will fill the vacancy created by the anticipated promotion of Jamison Verdin to Fire Captain.

Mr. Patton will be assigned to Range F02, Step F which provides a salary of $71,634.87 annually. The effective date of the promotion is August 13, 2020.

c: Amy Schenck, Clerk of Council
    Paul Lolli, Fire Chief
    Human Resources
    Finance (Payroll)
    file

FIRE LIEUTENANT
Authorized Strength - 11
Current Staff Level – 11 (including Jamison Verdin)
August 7, 2020

TO: Jim Palenick, City Manager

FROM: Brittany Grimes, Human Resources Specialist

SUBJECT: PROMOTIONAL APPOINTMENT – FIRE CAPTAIN

We are recommending the promotional appointment of JAMISON VERDIN to the position of Fire Captain in the Department of Public Safety, Division of Fire. Mr. Verdin was selected from the eligibility list as a result of Civil Service testing procedures. He will fill the vacancy created by the anticipated promotion of Stephen Ludwig to Fire Deputy Chief.

Mr. Verdin will be assigned to Range F03, Step F which provides a salary of $78,524.40 annually. The effective date of the promotion is August 13, 2020.

c: Amy Schenck, Clerk of Council
Paul Lolli, Fire Chief
Human Resources
Finance (Payroll)
file
cmtg8/18/20

FIRE CAPTAIN
Authorized Strength - 6
Current Staff Level – 6 (including Stephen Ludwig)
August 7, 2020

TO: Jim Palenick, City Manager
FROM: Brittany Grimes, Human Resources Specialist
SUBJECT: PROMOTIONAL APPOINTMENT – FIRE DEPUTY CHIEF

We are recommending the promotional appointment of STEPHEN LUDWIG to the position of Fire Deputy Chief in the Department of Public Safety, Division of Fire. Mr. Ludwig was selected from the eligibility list as a result of Civil Service testing procedures. He will fill the vacancy created by the anticipated retirement of Brent Dominy on August 12, 2020.

Mr. Ludwig will be assigned to Range F04, Step E which provides a salary of $86,079.63 annually. The effective date of the promotion is August 13, 2020.

c: Amy Schenck, Clerk of Council
    Paul Lolli, Fire Chief
    Human Resources
    Finance (Payroll)
    file

cmtg8/18/20

FIRE DEPUTY CHIEF
Authorized Strength - 3
Current Staff Level – 3 (including Brent Dominy)
PINNING CEREMONY
July 24, 2020

TO: Jim Palenick, City Manager
FROM: Samantha Zimmerman, Purchasing Agent

PURPOSE

To request Council approve the purchase of highway rock salt from Compass Minerals America Inc., of Overland Park, KS, in the amount of $55.81/ton for the approximate usage of 4,500 tons over the 2020-2021 winter season.

BACKGROUND and FINDINGS

This is an annual bid for the City’s snow and ice control. The salt price for the 2020-2021 winter season will be $55.81, which is significantly lower than last year’s $81.15/ton. There are many factors which go into the pricing of salt such as the severity of winter/usage in previous seasons.

This year, Compass Minerals America Inc. gave the lowest price to the City. This is a cooperative bid through the Southwest Ohio Purchasers for Government (SWOP4G). The needs of 86 different entities in the southwest and central Ohio area are represented on this bid.

ALTERNATIVES

The alternative would be to bid the salt on our own without the benefit of a purchasing cooperative. The cooperative gives us not only better pricing, but better leverage to get salt into the City when faced with a bad winter and limited salt supplies.

FINANCIAL IMPACT

The full financial impact of the purchase of salt depends on the severity of the winter. We estimate our usage to be approximately 4,500 tons during the course of a normal winter season. At a price of $55.81, this would equate to an expenditure of approximately $251,145. Funds are appropriated in the Street Maintenance budget (210.541.53520) for this purpose.

EMERGENCY/NON-EMERGENCY

Motion agenda
cc:    Jacob Burton, Finance Director
       Scott Tadych, Public Works & Utilities Director
       Charlie Anderson, Public Works Superintendent
DATE: August 3, 2020

TO: Jim Palenick, City Manager

FROM: Susan Cohen, Director of Administrative Services

Adopt Middletown Transit’s Public Transportation Safety Agency Plan

PURPOSE
To adopt the recommended Public Transportation Safety Agency Plan for Middletown Transit System.

BACKGROUND AND FINDINGS
New regulations federal regulations (49 CFR Part 673) require that each public transportation agency enact an agency safety plan in order to help ensure our public transportation system is safe. Recommended safety plans enact SMS System. SMS consists of 4 components: safety management policy, safety risk management, safety assurance, and safety promotion.

Staff with the City as well as our contracting partner, BCRTA have developed the proposed safety plan that complies with Federal Regulations and sets out our goals and processes for safety. This includes, but is not limited to: Requirements for training and operations by the employees to guarantee safety of riders, requirements for operations and training by the City to help operators and riders, clear procedures and expectations for safe operations, clear processes to follow in the event of a concern, and processes to review, monitor and mitigate risk on a continuing basis. Similar plans have been or are in the process of being adopted by our transit partners with BCRTA and the OKI transit group. This policy will guide and hold the Transit system responsible for taking safety measures and training all employees in accordance with the plan and make the system as safe as possible for all users.

ALTERNATIVES
Council could choose to adopt this plan, adopt a similar plan or adopt no plan. Failing to adopt a safety agency plan could result in violations of grant terms in the future and concerns for auditing of our transit system.

FINANCIAL IMPACTS
No immediate financial impact for adopting the plan. There could be potential loss of grant funds for failing to adopt and enforce a Safety Agency plan of some sort

EMERGENCY/NON EMERGENCY
Non Emergency- Motion Agenda
Ohio Department of Transportation (ODOT) Responsibility

According to 49 C.F.R. Part 673, the state is responsible for drafting and certifying the small public transportation providers. Small transportation providers are defined as recipients or subrecipients of Federal financial assistance under 49 U.S.C. 5307 that have one hundred (100) or fewer vehicles in peak revenue service and do not operate a rail fixed guideway public transportation system. Paratransit service provided by the recipient or subrecipient is subject to Part 673.

The Office of Transit administers funds for the Rural Transit Grant Program (FTA Section 5311), the Rural Transportation Assistance Program (FTA Section 5311 (b)(3), the Rural Intercity Bus Program Section 5311 (f), the Enhanced Mobility of Seniors and Individuals with Disabilities Program (FTA Section 5310) the Rail Fixed Guideway State Safety Oversight Program (FTA Section 5329), the Bus and Bus Facilities Program (FTA Section 5339), the Rural Technical Assistance Program (RTAP), the Ohio Elderly and Disabled Transit Fare Assistance Program, the Ohio Coordination Program, the Ohio Technical Assistance Program (OTAP), the Ohio Transit Partnership Program, and the Metropolitan & Statewide Planning and Non-Metropolitan Transportation Planning Program (FTA Section 5303/5304/5305) . ODOT is not an administering agency for Ohio Urban Transportation Grant Program (FTA Section 5307) funds. Urban transportation providers are direct recipients of 5307 funding.
## Version Tracking Log

According to 49 C.F.R. Part 673.11 (5), each transit agency must establish an annual review and update of the Public Transportation Agency Safety Plan. ODOT is drafting and certifying the plan and coordinates with the transit agency to review and update the plan annual.

<table>
<thead>
<tr>
<th>Version</th>
<th>Date Issued</th>
<th>Section/Pages Affected</th>
<th>Purpose for Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.0</td>
<td>07/20/2020</td>
<td>N/A</td>
<td>Original Document</td>
</tr>
</tbody>
</table>
Signature Page

_________________________________________    __________________
Susan Cohen, Accountable Executive, City of Middletown  Date of Signature

_________________________________________
Click or tap here to enter text., City Council, City of Middletown

Date of Approval
Table of Contents

Definitions of Special Terms Used in the Safety Plan
List of Acronyms Used in the Safety Plan
Agency Background and Information
Plan Annual Update Procedure
Safety Performance Targets
I. Safety Management Policy
II. Safety Risk Management
III. Safety Assurance
IV. Safety Promotion
Appendix 1 – FTA 49.C.F.R 673 Rule
Appendix 2 Safety Risk Matrix
Appendix 3 Ohio Small Urban Public Transit
Appendix 4 Butler County RTA Pre Hire Checklist
# Definitions of Special Terms Used in the Safety Plan

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accident</td>
<td>An event that involves any of the following: a loss of life; a report of a serious injury to a person; a collision of public transportation vehicles; a runaway train; an evacuation for life safety reasons; or any derailment of a rail transit vehicle, at any location, at any time, whatever the cause.</td>
</tr>
<tr>
<td>Accountable Executive</td>
<td>Single, identifiable person who has ultimate responsibility for carrying out the Public Transportation Agency Safety Plan of a public transportation agency; responsibility for carrying out the agency's Transit Asset Management Plan; and control or direction over the human and capital resources needed to develop and maintain both the agency's Public Transportation Agency Safety Plan, in accordance with 49 U.S.C. 5329(d), and the agency's Transit Asset Management Plan in accordance with 49 U.S.C. 5326.</td>
</tr>
<tr>
<td>Chief Safety Officer</td>
<td>An adequately trained individual who has responsibility for safety and reports directly to a transit agency's chief executive officer, general manager, president, or equivalent officer. A Chief Safety Officer may not serve in other operational or maintenance capacities, unless the Chief Safety Officer is employed by a transit agency that is a small public transportation provider as defined in this part, or a public transportation provider that does not operate a rail fixed guideway public transportation system.</td>
</tr>
<tr>
<td>Consequence</td>
<td>Potential outcome(s) of the hazard</td>
</tr>
<tr>
<td>Event</td>
<td>Any accident, incident, or occurrence</td>
</tr>
<tr>
<td>Fatality</td>
<td>A death or suicide confirmed within 30 days of a reported event. Does not include deaths in or on transit property</td>
</tr>
<tr>
<td>Hazard</td>
<td>Any real or potential condition that can cause injury, illness, or death; damage to or loss of the facilities, equipment, rolling stock, or infrastructure of a public transportation system; or damage to the environment.</td>
</tr>
<tr>
<td>Hazard Identification</td>
<td>Formal activities to identify hazards during operations related to provision of services</td>
</tr>
<tr>
<td>Incident</td>
<td>An event that involves any of the following: A personal injury that is not a serious injury; one or more injuries requiring medical transport; or damage to facilities, equipment, rolling stock, or infrastructure that disrupts the operations of a transit agency.</td>
</tr>
<tr>
<td><strong>Investigation</strong></td>
<td>The process of determining the causal and contributing factors of an accident, incident, or hazard, for the purpose of preventing recurrence and mitigating risk.</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>Performance measure</strong></td>
<td>An expression based on a quantifiable indicator of performance or condition that is used to establish targets and to assess progress toward meeting the established targets.</td>
</tr>
<tr>
<td><strong>Performance target</strong></td>
<td>A quantifiable level of performance or condition, expressed as a value for the measure, to be achieved within a time period required by the Federal Transit Administration (FTA).</td>
</tr>
<tr>
<td><strong>Occurrence</strong></td>
<td>An event without any personal injury in which any damage to facilities, equipment, rolling stock, or infrastructure does not disrupt the operations of a transit agency.</td>
</tr>
<tr>
<td><strong>Safety Assurance</strong></td>
<td>Processes within a transit agency's Safety Management System that functions to ensure the implementation and effectiveness of safety risk mitigation, and to ensure that the transit agency meets or exceeds its safety objectives through the collection, analysis, and assessment of information.</td>
</tr>
<tr>
<td><strong>Safety Management Policy</strong></td>
<td>Transit agency's documented commitment to safety, which defines the transit agency's safety objectives and the accountabilities and responsibilities of its employees in regard to safety.</td>
</tr>
<tr>
<td><strong>Safety Management System (SMS)</strong></td>
<td>Formal, top-down, organization-wide approach to managing safety risk and assuring the effectiveness of a transit agency's safety risk mitigation. SMS includes systematic procedures, practices, and policies for managing risks and hazards.</td>
</tr>
<tr>
<td><strong>Safety Performance target</strong></td>
<td>Performance Target related to safety management activities</td>
</tr>
<tr>
<td><strong>Safety Promotion</strong></td>
<td>Combination of training and communication of safety information to support SMS as applied to the transit agency's public transportation system.</td>
</tr>
<tr>
<td><strong>Safety Risk Assessment</strong></td>
<td>Formal activity whereby a transit agency determines Safety Risk Management priorities by establishing the significance or value of its safety risks.</td>
</tr>
<tr>
<td><strong>Safety Risk Management</strong></td>
<td>Process within a transit agency's Public Transportation Agency Safety Plan for identifying hazards and analyzing, assessing, and mitigating safety risk.</td>
</tr>
<tr>
<td><strong>Safety Risk Probability</strong></td>
<td>The likelihood that the consequence might occur, considering the worst foreseeable-but credible-condition</td>
</tr>
<tr>
<td><strong>Safety Risk Severity</strong></td>
<td>The anticipated effects of a consequence, should it materialize, taking as reference the worst foreseeable- but credible-condition</td>
</tr>
<tr>
<td><strong>Small Public Transportation Provider</strong></td>
<td>A recipient or subrecipient of Federal financial assistance under 49 U.S.C. 5307 that has one hundred (100) or fewer vehicles in peak revenue service and does not operate a rail fixed guideway public transportation system.</td>
</tr>
<tr>
<td><strong>Statewide Transportation Improvement Program</strong></td>
<td>A short-range multi-modal transportation state planning document required by USDOT for use in approving federal funds for transportation projects, typically four years</td>
</tr>
<tr>
<td><strong>Transportation Improvement Program</strong></td>
<td>A short-range multi-modal transportation regional planning document developed and maintained by each MPO and RTPO region in accordance to federal regulations, typically four years</td>
</tr>
<tr>
<td><strong>Performance target</strong></td>
<td>A quantifiable level of performance or condition, expressed as a value for the measure, to be achieved within a time period required by the Federal Transit Administration (FTA).</td>
</tr>
</tbody>
</table>
List of Acronyms Used in the Safety Plan

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Word or Phrase</th>
</tr>
</thead>
<tbody>
<tr>
<td>AE</td>
<td>Accountable Executive</td>
</tr>
<tr>
<td>BCRTA</td>
<td>Butler County Regional Transit Authority</td>
</tr>
<tr>
<td>CEO</td>
<td>Chief Executive Officer</td>
</tr>
<tr>
<td>CSO</td>
<td>Chief Safety Officer</td>
</tr>
<tr>
<td>DOT</td>
<td>Department of Transportation</td>
</tr>
<tr>
<td>ED</td>
<td>Executive Director</td>
</tr>
<tr>
<td>FTA</td>
<td>Federal Transit Administration</td>
</tr>
<tr>
<td>GM</td>
<td>General Manager</td>
</tr>
<tr>
<td>MPO</td>
<td>Metropolitan Planning Organization</td>
</tr>
<tr>
<td>MTS</td>
<td>Middletown Transit Services</td>
</tr>
<tr>
<td>NTD</td>
<td>National Transit Database</td>
</tr>
<tr>
<td>NTSB</td>
<td>National Transportation Safety Board</td>
</tr>
<tr>
<td>ODOT</td>
<td>Ohio Department of Transportation</td>
</tr>
<tr>
<td>OKI</td>
<td>Ohio Kentucky Indiana Regional Councils of Governments</td>
</tr>
<tr>
<td>OSHA</td>
<td>Occupational Safety and Health Administration</td>
</tr>
<tr>
<td>PTASP</td>
<td>Public Transportation Agency Safety Plan</td>
</tr>
<tr>
<td>RTA</td>
<td>Regional Transit Authority</td>
</tr>
<tr>
<td>SA</td>
<td>Safety Assurance</td>
</tr>
<tr>
<td>SME</td>
<td>Subject Matter Expert</td>
</tr>
<tr>
<td>SMI</td>
<td>Safety Management Inspection</td>
</tr>
<tr>
<td>SMS</td>
<td>Safety Management System</td>
</tr>
<tr>
<td>SOP</td>
<td>Standard Operating Procedure</td>
</tr>
<tr>
<td>Acronym</td>
<td>Full Form</td>
</tr>
<tr>
<td>---------</td>
<td>-----------</td>
</tr>
<tr>
<td>SRM</td>
<td>Safety Risk Management</td>
</tr>
<tr>
<td>SSO</td>
<td>State Safety Oversight</td>
</tr>
<tr>
<td>SSOA</td>
<td>State Safety Oversight Agency</td>
</tr>
<tr>
<td>STIP</td>
<td>Statewide Transportation Improvement Program</td>
</tr>
<tr>
<td>TA</td>
<td>Transit Agency</td>
</tr>
<tr>
<td>TSA</td>
<td>Transportation Security Administration</td>
</tr>
<tr>
<td>TSI</td>
<td>Transportation Safety Institute</td>
</tr>
<tr>
<td>TSO</td>
<td>Office of Safety and Oversight</td>
</tr>
<tr>
<td>TTP</td>
<td>Technical Training Plan</td>
</tr>
<tr>
<td>USDOT</td>
<td>United States Department of Transportation</td>
</tr>
</tbody>
</table>
What is a Public Transportation Agency Safety Plan?

The PTASP is a plan that will help ensure that a public transportation system is safe. With the development and implementation of the SMS, the public transportation system will have the ability to mitigate unacceptable hazards and ensure the mitigation is properly implemented and effective. SMS is a formal, top-down, organization-wide approach to managing safety risk and assuring the effectiveness of a transit agency's safety risk mitigation. SMS consists of 4 components: safety management policy, safety risk management, safety assurance, and safety promotion.

On July 19, 2018, FTA published the PTASP Final Rule, which is a requirement for recipients of federal funds under the FTA’s Urbanized area Formula Grants (5307). The rule became effective July 19, 2019 and the compliance date is July 20, 2020.

FTA is responsible for ensure RTAs are in compliance with 49 CFR Part 673. City of Middletown will maintain documents that set forth this Public Transportation Agency Safety Plan, including those related to the implementation of Safety Management System (SMS), and results from SMS processes and activities. City of Middletown will maintain documents that are included in whole, or by reference, that describe the programs, policies, and procedures used to carry out this Public Transportation Agency Safety Plan. These documents will be made available upon request by Federal Transit Administration, other Federal entity, or a State Oversight Agency having jurisdiction. The City of Middletown will maintain these documents for three years after they are created.
Agency Background and Information

Accountable Executive: Susan Cohen

Susan currently serves as Director of Administrative Services for City Government in Middletown. Susan is the chief administrator for the Middletown Transit System. Susan’s background in law including serving as the Assistant Prosecuting Attorney in Clinton County, Ohio Legal Intern in Hamilton County, Legal Intern for the International Criminal Tribunal for the former Yugoslavia, Judicial Extern for the United States Bankruptcy Court and Corporate Financial Planning.

Chief Safety Officer/SMS Executive: Carla Oden, Safety and Training Manager

As a former Vehicle Operator, Outline Instructor, Operations Supervisor, Asst. Operations Manager to Manager, Carla embraces being a part of the City of Middletown team. Safety and Training Manager is responsible for overseeing and implementing vehicle operator safety/training programs while remaining in compliance of all policies and procedures.

Address: One Donham Plaza, Middletown, Ohio 45042

Mode of Service Covered in Plan: Bus

FTA Funding: 5307

Mode of Service Provided by Transit Agency: Bus - Fixed Route, Demand Response

BCRTA serves as a contractor to provide Fixed Route and Demand Response services for the city of Middletown.

Fleet Size: There are 7 total vehicles in the City of Middletown Fleet


Service Area: MTS has 4 routes:

- Blue- Travels east from Middletown Transit Station. Destinations along this route include Towne Blvd Meijer, Kohls, Walmart, and the Social Security Administration.
- Green- Travels south from the Middletown Transit Station onto Main Street destinations along this route include Middletown Library, Kroger on Oxford State Rd. This route also travels north from the Middletown Transit Station through residential areas on Tytus Avenue, Jewell Avenue, and Wilbraham Rd.
- Gold- Travels east from the Middletown Transit Station. Destinations along this route include the Middletown License Agency (BMV) and Mayfield Elementary School. This route also travels south from the Middletown Transit Station. Destinations include multiple bus stops in residential areas along Yankee Rd, Curtis St, Lafayette Ave, and Baltimore St.
- Red- Travels east from the Middletown Transit Station. Destinations along this route include Miami University of Middletown, Atrium Medical center, Access Counseling, and Towne Blvd Social Security Administration.
Butler County Regional Transit Authority and Middletown Transit Service are proud to offer EVENING DIAL-A-RIDE service within the Middletown Transit System service area. Travel anywhere you can get on the MTS after the fixed route buses stop running.

Passengers will schedule their trips in advance and a bus will pick them up at their location and drop them off at their scheduled destination, much like a taxi or shared ride service.

Service will be available after the MTS lines stop operating until 11 PM on weekdays. To schedule a ride one day in advance you must call (513) 785-5237 between 7AM and 5PM. Reservations received with less than one day of notice will be accommodated when possible but are not guaranteed.

Mission

The City of Middletown is located in the heart of Ohio’s Southwestern Metropolitan region. Middletown is 25 miles south of Dayton and is 30 miles north of Cincinnati. With a tight knit community and strong manufacturing history, Middletown, Ohio is the perfect place to live, play, work, and grow. Middletown boasts a booming economy, with the recent arrival of the AK Steel Research & Development Center and the Middletown energy Center. Middletown is also home to the Ohio Balloon Challenge, a hot-air balloon competition that draws competitors from all over the world. Located just off Ohio’s Interstate 75 is the Middletown regional Airport, making travel around the region even easier for visitors, residents, and businesspeople. Education is important in Middletown. Middletown is home to a new middle school and new renovated high school and has a fine network of elementary schools. There is also a wide variety of higher education choices: Cincinnati State, Miami University Middletown, Butler Tech, the Warren County Career Center, and the Greentree health Sciences Academy all call Middletown Home.

We Understand:

- That we create the environment in which the citizens of Middletown live
- That we are essential in creating a livable and vibrant urban environment that makes Middletown an attractive place to live, work and play
- That positive energy is contagious
- That we implement policy as developed by City Council, and guide the quality of the community
- That we are responsible for delivering the public services that our residents seek and City Council deems appropriate
- That we are only as strong as our weakest link
- That the image of Middletown as a community is dramatically impacted by our work product and our attitude about the City
- That we must all work together as a team to accomplish our goals

We Are Committed:

- To providing quality public services in a positive and efficient manner
- To treating the public and our co-workers in the manner in which we would like to be treated
• To making Middletown a great place to live, an exciting place to do business and a pleasant, friendly place to visit
• To representing Middletown in a positive way and projecting the community in a good light
• To serving the public with dedication, integrity, and responsibility in undertaking our roles as the caretakers of all things public in Middletown

We Promise:

• Our best effort every day to deliver quality public service to the citizens of Middletown
• Our belief in and commitment to the values of the City
• Our dedication to making Middletown a special place to live, work and play
• Our resolve to present Middletown as a community with a “bright past” and a “brighter future”
• Our unending realization that the work we do is very important and that our commitment is one of dedication and honor
• Our determination that our work experience is not “just a job”, but “The Journey of a Lifetime”

The Ohio, Kentucky, Indiana Regional Council of Governments (OKI) is City of Middletown’s Metropolitan Planning Organization in the Cincinnati Metropolitan Area. Per regulations in the FAST Act, OKI with the other regional transit authorities Southwest Ohio Regional Transit Authority (SORTA), Clermont Transportation Connection (CTC), Transit Authority of Northern Kentucky (TANK), Butler County Regional Transit Authority (BCRTA), and Warren Transit System (WTS) will approve safety targets and plans. CTC, BCRTA, City of Middletown, and WTS have chosen to utilize the State Safety Plan.
Plan Annual Update Procedure

49 C.F.R. Part § 673.11(5), states, “Each transit agency must establish a process and timeline for conducting an annual review and update of the Public Transportation Agency Safety Plan”.

ODOT develops the Statewide Transportation Improvement Program biennially. The STIP references the Transportation Improvement Program drafted by the Metropolitan Planning Organizations and approved by ODOT. MPOs have the ability to update based on their schedule. STIP Amendments are scheduled on a quarterly schedule: July, October, January, and April. The National Public Transportation Safety Plan which is referenced in the 49 C.F.R. Part 673 requires that the safety performance targets are listed in the S/TIP.

49 C.F.R. Part § 673.11 states,

(4) The Public Transportation Agency Safety Plan must address all applicable requirements and standards as set forth in FTA's Public Transportation Safety Program and the National Public Transportation Safety Plan. Compliance Start Printed Page 34467 with the minimum safety performance standards authorized under 49 U.S.C. 5329(b)(2)(C) is not required until standards have been established through the public notice and comment process.

ODOT submits the 5-year safety performance rolling averages based from the transit agencies’ NTD reports. The data in the NTD is reported on a calendar year basis. Based on the NTD reporting cycle, the annual data will be reviewed and updated at the end of the calendar year.

The process will include:
1. CSO requests the safety committee and/or executive management to review current agency safety plan.
2. CSO reviews comments and make changes as he/she sees necessary. Review and edit the PTASP safety performance measures and targets as a transit agency, e.g., safety committee.
3. CSO will present AE with the revised agency safety plan.
4. If approved, AE will present to the Board for approval. If AE does not approve the PTASP, then CSO will review and revise.
5. Once approved by AE, the AE will present changes to Board of Trustees or City Council for signature.
6. Email PTASP revisions targets with ODOT and MPO.
7. MPO will update their TIP to include the new safety performance targets and submit the update TIP to the ODOT to be included in the STIP amendment.

Safety Performance Targets

According to 49 C.F.R. Part 673.11(3) The Public Transportation Agency Safety Plan must include performance targets based on the safety performance measures established under the National Public Transportation Safety Plan. The safety performance measures are:

- Fatalities
Methodology: ODOT Office of Program Management complied the five-year rolling averages to calculate historical trends for each measure. According to the Ohio Strategic Highway Safety Plan, “a rolling average is used to better predict long-term crash trends by smoothing out short-term year-to-year fluctuations.” The Office of Transit decided to use the five-year rolling average method to determine the baseline and the target for each safety performance measure. ODOT collected 2013-2018 from NTD and the transit agency.

ODOT recommended a 2% reduction target for the four safety performance targets except where the safety performance targets are 0. If the safety performance targets are 0, then BCRTA plans to maintain the zero target. Data was presented to the transit agency for reviewal and approval. After approval from the transit agency, an email was distributed to the MPO and the transit agency for their records.

<table>
<thead>
<tr>
<th>Mode of Transit Service</th>
<th>Fatalities</th>
<th>Rate Per Total Vehicle Revenue Miles</th>
<th>Injuries</th>
<th>Rate Per Total Vehicle Revenue Miles</th>
<th>Safety Events</th>
<th>Rate Per Total Vehicle Revenue Miles</th>
<th>System Reliability</th>
</tr>
</thead>
<tbody>
<tr>
<td>DR</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>22,451</td>
</tr>
<tr>
<td>MB</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>15,711</td>
</tr>
</tbody>
</table>

Safety Performance Target Coordination

49 C.F.R Part 673.15(b) To the maximum extent practicable, a State or transit agency must coordinate with States and Metropolitan Planning Organization in the selection of State and MPO safety performance targets.

ODOT scheduled and conducted meetings with the transit agency and the MPO. ODOT met with the two entities to gather information about their transit agency safety policies and procedures. At the initial meeting, the SSO Program Manager educated the transit agency and the MPO on the purpose, objectives, and goals of the PTASP. ODOT explained the federal requirements including the safety performance target. Data was presented to the transit agency for reviewal and approval. An email was sent to the MPOs with the safety performance targets of the transit agencies located within their justification.
<table>
<thead>
<tr>
<th>Targets Transmitted to the State</th>
<th>State Entity Name</th>
<th>Date Targets Transmitted</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Ohio Department of Transportation</td>
<td>July 6, 2020</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Targets Transmitted to the Metropolitan Planning Organization(s)</th>
<th>Metropolitan Planning Organization Name</th>
<th>Date Targets Transmitted</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>OKI Regional Council of Governments</td>
<td>July 6 2020</td>
</tr>
</tbody>
</table>
I. Safety Management Policy

Safety Management Policy Statement

71.01 Employee Safety Policy

It is the policy of the City of Middletown that each and every employee is entitled to work under the safest possible conditions; therefore, every reasonable effort will be made in the interest of accident prevention, fire prevention and health preservation. The City of Middletown will endeavor to maintain a safe and healthful workplace. It is our belief that accidents which injure people, damage equipment, and destroy property cause needless personal suffering, inconvenience, and expense. We believe that practically all accidents can be prevented by taking common sense precautions.

The responsibility for safety in each department remains with the Department Director. The employee is responsible to satisfactorily perform assigned duties in accordance with accepted safety practices under any and all circumstances, report any unsafe conditions and practices, observe safety rules, make safety suggestions, and ask for assistance or further explanation when needed. Each supervisor is to ensure that work is done in a safe manner, inspections are conducted on a regular basis, hazards are reported, and accident investigations are conducted for each accident.

In this overall effort to keep employees on the job and the public protected, we can fulfill our obligations to serve the public. We are confident that this program will be successful and expect your cooperation and support.

71.02 Responsibility for Safety

It is the responsibility of every department to assure safe working conditions, tools, equipment, training, and work methods for its employees. Unsafe conditions should be corrected promptly. All safety rules, including the use of safety protective equipment and safe working methods, should be observed. Ultimate responsibility for safety within the department shall, as in other matters, remain with the Department Director.

Safety is MTS’s first priority. MTS is committed to implementing, developing, and improving strategies, management systems, and processes to ensure that all our activities uphold the highest level of safety performance and meet required safety standards. We will develop and embed a safety culture in all our activities that recognizes the importance and value of effective safety management and acknowledges at all times that safety is paramount. We will clearly explain for all staff their accountabilities and responsibilities for the development and operation of the Safety Management System. For passengers and employees, we will minimize the safety risk associated with transit service to as low as reasonably practicable and we will work to comply with and, wherever possible, exceed legislative and regulatory requirements and standards. We also will work to ensure that all employees are provided with adequate and appropriate safety information and training, are competent in safety matters, and are only allocated tasks commensurate with their skills. We have established safety performance targets to help us measure the overall effectiveness of our processes and ensure we meet our safety objectives. We will issue quarterly reports to the entire organization documenting how well we met our safety performance targets and describing the safety risk mitigations we implemented to reduce safety risk.
Safety Management Policy Communication

71.04 Central Safety Committee

The Personnel Division shall serve in the position of Safety Officer and will be responsible for the operation of the City Safety Program. The Personnel Division shall designate a Safety Committee Chairman who shall chair the Central Safety Committee. A Central Safety Committee will function as an advisory body to develop and recommend to the City Manager matters of policy and procedure affecting administration of the City Safety Program. Membership shall consist of representatives of each department, with an equal number from labor and management. Its primary purpose shall be to promote the safety and health of City employees. The committee shall meet monthly during regularly scheduled work hours. Its function shall include, but not be limited to, the following:

- Oversee the elimination of unsafe working conditions and practices through periodic inspections and at departmental request.
- Establish a safety training program for all employees pertinent to their job function.
- To oversee safety policy.
- Review safety reports to determine the effectiveness of the overall safety program and develop recommendations for improvement.
- Propose amendments to the City's safety program and policy as they become necessary.

71.05 Departmental Safety Committee

Departmental safety committees may be created to promote and assure safety awareness and to assist in seeing that program policies are followed within the respective departments.

BCRTA will introduce the SMS Policy into the Training Plan for new hires. Memorandums will be distributed, and each employee will sign electronically on their portal. The AE and/or CSO will discuss the importance of the PTASP, SMS and its components, and their safety management at the Bid Meeting. The Bid meeting is where all employees pick their schedule for the next season.

The policy will also be posted on the bulletin board in the breakroom and on the transit agency’s website. Posting the safety management policy statement on the website displays our commitment to safety for our employees, clients, and the public.

Authorities, Accountabilities, and Responsibilities

Individuals for the development and management of the transit agency’s Safety Management System (SMS)

<table>
<thead>
<tr>
<th>Accountable Executive</th>
<th>Responsibility for carrying out the PTASP</th>
</tr>
</thead>
</table>

20
Chief Safety Officer or SMS Executive

- Establish guidance on the level of safety risk acceptable to the agency
- Ensure safety concerns are considered in the agency’s ongoing budget planning process
- Authorizes appropriate updates and approvals for the PTASP and MPO Transit Safety Targets
- BCRTA manages MTS and also shares the responsibility for carrying out the PTASP with the City of Middletown.

The CSO authorities, accountabilities and responsibilities include but are not limited to:
- Manages the SMS on behalf of the AE
- Direct hazard identification and safety risk evaluation
- Monitor mitigation activities
- Maintain safety documentation
- Plan and organizes safety management training
- Coordinate in conjunction with other agencies, pertinent to BCRTA’s operations;
- Maintain and keep current all records, including employee records associated with safety and training;
- Assist in the development and necessary modifications of procedures
and ensure they are implemented for the safety and security of personnel, facilities, equipment, other property, and records.

- Manages BCRTA’s safety committees and assigns tasks to be completed based off of recommendations through the committees
- Maintain a solid grasp of safety knowledge of the types of challenges for incidents and accidents that are likely to be encountered.

Agency Leadership and Executive Management

The executive leadership team consist of: Administrative Services Director, Finance Director, Economic Development Director and City Manager.

BCRTA’s Finance/Administration and Operations, operations managers, Maintenance Manager.

These roles consist of providing support and enforcement of the PTASP and the SMS four components.

Key Staff

The safety committee consist of project managers, drivers, and members of the operation and maintenance department. The committee meets quarterly to discuss preventive measures and safety measures. The committee is committed to sharing information, resource collections.

Employee Safety Reporting Program

71.03 Responsibility of the Employee

It is the duty and responsibility of all employees to use the safety equipment provided, and any additional equipment required for employment, and to follow all safety rules and safe working methods. A violation of any safety rule is to be considered the same as a violation of any other rule or regulation and shall be subject to appropriate disciplinary action. In addition, it is the responsibility of each employee to report any condition or act which may be considered unsafe to the immediate supervisor.

MTS/BCRTA’s employees have several methods of reporting safety conditions to their senior management team including:

- Report to a dispatcher, supervisor and/or manager via phone
- Report to a supervisor and/or manager in person
- Suggestion box
- Send a message through HRIS System

Employees have the option to report anonymously. If senior management has the submitter contact information, they are able to update them of the status of the safety condition or ask for more details. Employees with a great rapport may set up a meeting to discuss the safety conditions that have been identified.
The suggestion box is used to allow employees the opportunity to express their concerns, share their ideas, provide preventive measures or procedures an employee may find beneficial to the improvement of their daily job functions.

Employee behaviors that can result in disciplinary action up to and including termination are:

- Negligence or willful inattention to work.
- Discourteous or insubordinate conduct to passengers, managers, co-workers, or others.
- Divulging confidential information.
- Theft or dishonesty.
- Possession use or being under the influence of alcohol or controlled substances.
- Absence or tardiness and/or misuse of sick time.
- Failure to establish and maintain a harmonious working relationship.
- Failure to perform duties adequately and properly or interference with other employees’ work.
- Falsification of records.
- Negligence of safety, emergency, and health rules.
- Unprofessional conduct or conduct detrimental to the best interests of MTS.
- Careless or unreported accident or incident.
- Smoking in restricted areas (which shall include bus stops, terminals, inside MTS facilities and onboard an MTS vehicle).
- Failing to stop at railroad crossings.
- Mishandling fares.
- Conviction of traffic violations, whether or not such conviction(s) results in suspension or revocation of CDL.
- Failing to report citations issued, whether issued on or off duty.
- Failure to wear proper uniform or attire.
- Taking the MTS vehicle off route.
- Allowing another person to do any part of your job without proper authorization.
- Speeding, reckless driving or other inappropriate operation of an MTS vehicle, even if the conduct does not result in a citation or accident.
- Sabotage, tampering with, or the malicious destruction of MTS property or equipment or unnecessary wasting of material.
- Conduct which violates common decency or morality.
- Any form of violent or aggressive behavior.
- Any violation of the drug free workplace policy.
- Any violation of the Employee Policy Handbook.
- Violation of any MTS policy or procedure.
II. Safety Risk Management

Safety Hazard Identification will limit the number of fatalities, injuries, safety events, and major mechanical failures. MTS/BCRTA has several methods of hazard identification including:

- Customer complaints
- Safety Audits- randomly by supervisors
- Pre and Post Trip Forms
- Monthly Facility Walk-Through
- Employee Reporting
- Incident and accident investigations
- FTA Triennial Reviews
- Safety Audits
- Safety Reference Guide for dispatchers and vehicle operators
- Safety Metric Report Sheet

Safety Risk Assessment

The Safety Risk process includes analyzing the likelihood of a consequence occurring - probability; and evaluating the seriousness of a consequence if it does occur- severity.

Currently, our agency has several data collection logs for hazard reporting including their customer complaints, maintenance, safety audit finding and CAPs.

Hazards are assessed by the Chief Safety Officer and the Safety Committee. MTS/BCRTA utilizes a rating key of 0-5 with 5 being the highest level of hazard. Hazards can be identified by internal and external sources and should be reported to the Chief Safety Officer.

Safety Risk Mitigation

The goal is to reduce safety risk to an acceptable level. FTA recognizes that transit agencies will have risk, but it is crucial that they are acceptable. Once a hazard has been identified, it is immediately mitigated by the specifically assigned department. If there are multiple potential mitigations for a hazard, the employee consults with their supervisor.

The Safety Committee which meets quarterly at a minimum discusses any hazards and risks and identifies an approach to be taken to resolve the issue within a defined timeframe. Depending on the risk, mitigation and strategies may include measures that require an additional budget. The Chief Safety Officer will be tasked with getting any additional safety dollars approved by the Account Executive.
III. Safety Assurance

Procedure Compliance

Senior management performs random safety audit in each department. If there are any findings in the audit, corrective actions plans will be made and mitigated. On-board cameras are located inside of the bus. Senior management has the ability to view cameras for operator compliance.

Ineffective, Inappropriate Mitigations Procedures

By retraining, random safety audits and hosting required refresher training, hazards will be effective and appropriate. Training will be implemented as often as needed and on a case by case basis. Any unsafe behaviors may result in disciplinary action, up to and including termination. In addition, anyone who performs unsafe behaviors can be removed from the “safety sensitive” function until these behaviors have been corrected.

Investigations of Safety Events

Any accident involving a city vehicle or equipment must be reported as follows (including damage to private property):

Call and report to the supervisor immediately, no matter how minor the damage. Always call the Police or law enforcement agency having jurisdiction and report any injuries.

Remain at the scene of the accident until the police respond and make their investigation.

Obtain names of other parties involved and license numbers of other vehicles. Fill out accident report (as referenced below) and turn into the immediate supervisor immediately.

The police or law enforcement agency having jurisdiction does not have to be notified if a city vehicle and/or equipment damage is estimated $500 or less and there are no injuries and the incident occurs on City property.

Public safety vehicles responding to emergency calls need not stop but must report accidents as soon as possible.

MTS vehicle operators are to first, stay calm. Secure the vehicle and passengers. Ask if everyone is ok and check for injuries. Determine if the vehicle will need to be moved or evacuated. Call dispatch over the radio. If the vehicle needs to be evacuated, operators will make sure all passengers are accounted for and keep them in a safe location at least 100 feet away from the vehicle. Then set out reflective triangles to warn other drivers. Vehicle operators will wait until a Supervisor arrives before speaking with any other drivers involved. Operators are also required to take pictures, collect statements, and obtain contact information from passengers or anyone who has witnessed the scene of the accident. All accident report forms must be completed and turned in to the dispatcher or supervisor on duty at the end of their shift.
Accident reports must include:
- Driver’s Written Report
- Supervisor’s Written Report
- Police Report Number if Applicable
- Witness Cards and or Statements
- Photos of Accident Scene and Damages
- Copy of Citation if Applicable
- Drug & Alcohol Form
- General Detailed Information (names, vehicle makes and models, when, where etc.)
- Insurance Information

Internal Safety Reporting Program

Senior Management performs random safety audits in each department. If there are any findings in the audit, corrective actions plans will be made and mitigated.
IV. Safety Promotion

Safety Training Program

BCRTA has a training plan for New Hires. BCRTA Operator Development Course ID 1845.

- Introduction to Professional Driving
- Federal Regulations
- Hazards Communication
- Creating a Drug & Alcohol-Free Workplace
- Preventing Harassment
- Bloodborne Pathogens
- Fatigue Management
- Wellness
- Whistleblower
- Safety Best Practices
- Introduction to The Bus
- Pre-Trip Inspections
- Mirror Adjustments & Reference Points
- LLLC Defensive Driving
- Preventing Driver Distractions
- Following Distance
- Intersections
- Railroad Crossings
- Pedestrian Awareness
- Preventing Backing Accidents
- Merging, Lane Changing & Passing
- Special Driving Conditions
- Map Reading
- Introduction to ADA Sensitivity
- Lifts, Ramps & Securements
- Professionalism/Customer Service
- Conflicts & Aggression Management
- Accidents & Emergency Procedures
- NTI Warning Signs
- Major Unusual Incidents
- QRT Max
- Fire Extinguisher - Ready to Respond

BCRTA hosts annual refresher trainings on different topics. All employees have a CPR 2-year refresher.

- Accidents & Emergency Procedures
- Lifts, Ramps & Securements
- Conflicts & Aggression PT II
Safety Communication

MTS’s number one priority is safety for their employees, customers, and the public. In order to keep their employees safe, memorandums are posted as needed and placed in their employees’ mailboxes. If drivers are in route, then dispatchers notify them via radio.

MTS social media team alerts the employees, customers, and the public of safety events, delays, and safety tips while using the system.

At the annual banquet, employees are recognized that have displayed a safety culture in the workplace. Employees receive a certificate and a lapel pin recognizing their years of safety.

Any mitigation of hazards that will affect employee daily functions will be reported to them via an internal memo or change of standard operating procedure. MTS utilizes an online module system, Paycom; for employees to sign any changes to procedure so that an authorization trail is made.
Appendix 1 - FTA 49.C.F.R 673 Rule

Subpart A—General

§ 673.1 Applicability

(a) This part applies to any State, local governmental authority, and any other operator of a public transportation system that receives Federal financial assistance under 49 U.S.C. Chapter 53.

(b) This part does not apply to an operator of a public transportation system that only receives Federal financial assistance under 49 U.S.C. 5310, 49 U.S.C. 5311, or both 49 U.S.C. 5310 and 49 U.S.C. 5311.

§ 673.3 Policy

The Federal Transit Administration (FTA) has adopted the principles and methods of Safety Management Systems (SMS) as the basis for enhancing the safety of public transportation in the United States. FTA will follow the principles and methods of SMS in its development of rules, regulations, policies, guidance, best practices, and technical assistance administered under the authority of 49 U.S.C. 5329. This part sets standards for the Public Transportation Agency Safety Plan, which will be responsive to FTA’s Public Transportation Safety Program, and reflect the specific safety objectives, standards, and priorities of each transit agency. Each Public Transportation Agency Safety Plan will incorporate SMS principles and methods tailored to the size, complexity, and scope of the public transportation system and the environment in which it operates.

§ 673.5 Definitions

As used in this part:

*Accident* means an Event that involves any of the following: A loss of life; a report of a serious injury to a person; a collision of public transportation vehicles; a runaway train; an evacuation for life safety reasons; or any derailment of a rail transit vehicle, at any location, at any time, whatever the cause.

*Accountable Executive* means a single, identifiable person who has ultimate responsibility for carrying out the Public Transportation Agency Safety Plan of a public transportation agency; responsibility for carrying out the agency’s Transit Asset Management Plan; and control or direction over the human and capital resources needed to develop and maintain both the agency’s Public Transportation Agency Safety Plan, in accordance with 49 U.S.C. 5329(d), and the agency’s Transit Asset Management Plan in accordance with 49 U.S.C. 5326.

*Chief Safety Officer* means an adequately trained individual who has responsibility for safety and reports directly to a transit agency’s chief executive officer, general manager, president, or equivalent officer. A Chief Safety Officer may not serve in other operational or maintenance capacities, unless the Chief Safety Officer is employed by a transit agency that is a small public transportation provider as defined in this part, or a public transportation provider that does not operate a rail fixed guideway public transportation system.

*Equivalent Authority* means an entity that carries out duties similar to that of a Board of Directors, for a recipient or subrecipient of FTA funds under 49 U.S.C. Chapter 53, including sufficient authority to review and approve a recipient's Public Transportation Agency Safety Plan.

*Event* means any Accident, Incident, or Occurrence.

*FTA* means the Federal Transit Administration, an operating administration within the United States Department of Transportation.

*Hazard* means any real or potential condition that can cause injury, illness, or death; damage to or loss of the facilities, equipment, rolling stock, or infrastructure of a public transportation system; or damage to the environment.
Incident means an event that involves any of the following: A personal injury that is not a serious injury; one or more injuries requiring medical transport; or damage to facilities, equipment, rolling stock, or infrastructure that disrupts the operations of a transit agency.

Investigation means the process of determining the causal and contributing factors of an accident, incident, or hazard, for the purpose of preventing recurrence and mitigating risk.

National Public Transportation Safety Plan means the plan to improve the safety of all public transportation systems that receive Federal financial assistance under 49 U.S.C. Chapter 53.

Occurrence means an Event without any personal injury in which any damage to facilities, equipment, rolling stock, or infrastructure does not disrupt the operations of a transit agency.

Operator of a public transportation system means a provider of public transportation as defined under 49 U.S.C. 5302(14).

Performance measure means an expression based on a quantifiable indicator of performance or condition that is used to establish targets and to assess progress toward meeting the established targets.

Performance target means a quantifiable level of performance or condition, expressed as a value for the measure, to be achieved within a time period required by the Federal Transit Administration (FTA).

Public Transportation Agency Safety Plan means the documented comprehensive agency safety plan for a transit agency that is required by 49 U.S.C. 5329 and this part.

Rail fixed guideway public transportation system means any fixed guideway system that uses rail, is operated for public transportation, is within the jurisdiction of a State, and is not subject to the jurisdiction of the Federal Railroad Administration, or any such system in engineering or construction. Rail fixed guideway public transportation systems include but are not limited to rapid rail, heavy rail, light rail, monorail, trolley, inclined plane, funicular, and automated guideway.

Rail transit agency means any entity that provides services on a rail fixed guideway public transportation system.

Risk means the composite of predicted severity and likelihood of the potential effect of a hazard.

Risk mitigation means a method or methods to eliminate or reduce the effects of hazards.

Safety Assurance means processes within a transit agency's Safety Management System that functions to ensure the implementation and effectiveness of safety risk mitigation, and to ensure that the transit agency meets or exceeds its safety objectives through the collection, analysis, and assessment of information.

Safety Management Policy means a transit agency's documented commitment to safety, which defines the transit agency's safety objectives and the accountabilities and responsibilities of its employees in regard to safety.

Safety Management System (SMS) means the formal, top-down, organization-wide approach to managing safety risk and assuring the effectiveness of a transit agency's safety risk mitigation. SMS includes systematic procedures, practices, and policies for managing risks and hazards.

Safety Management System (SMS) Executive means a Chief Safety Officer or an equivalent.

Safety performance target means a Performance Target related to safety management activities.

Safety Promotion means a combination of training and communication of safety information to support SMS as applied to the transit agency's public transportation system.

Safety risk assessment means the formal activity whereby a transit agency determines Safety Risk Management priorities by establishing the significance or value of its safety risks.

Safety Risk Management means a process within a transit agency's Public Transportation Agency Safety Plan for identifying hazards and analyzing, assessing, and mitigating safety risk.
Serious injury means any injury which:
(1) Requires hospitalization for more than 48 hours, commencing within 7 days from the date of the injury was received;
(2) Results in a fracture of any bone (except simple fractures of fingers, toes, or noses);
(3) Causes severe hemorrhages, nerve, muscle, or tendon damage;
(4) Involves any internal organ; or
(5) Involves second- or third-degree burns, or any burns affecting more than 5 percent of the body surface.

Small public transportation provider means a recipient or subrecipient of Federal financial assistance under 49 U.S.C. 5307 that has one hundred (100) or fewer vehicles in peak revenue service and does not operate a rail fixed guideway public transportation system.

State means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

State of good repair means the condition in which a capital asset is able to operate at a full level of performance.

State Safety Oversight Agency means an agency established by a State that meets the requirements and performs the functions specified by 49 U.S.C. 5329(e) and the regulations set forth in 49 CFR part 674.

Transit agency means an operator of a public transportation system.

Transit Asset Management Plan means the strategic and systematic practice of procuring, operating, inspecting, maintaining, rehabilitating, and replacing transit capital assets to manage their performance, risks, and costs over their life cycles, for the purpose of providing safe, cost-effective, and reliable public transportation, as required by 49 U.S.C. 5326 and 49 CFR part 625.

Subpart B—Safety Plans

§ 673.11 General requirements

(a) A transit agency must, within one calendar year after July 19, 2019, establish a Public Transportation Agency Safety Plan that meets the requirements of this part and, at a minimum, consists of the following elements:

(1) The Public Transportation Agency Safety Plan, and subsequent updates, must be signed by the Accountable Executive and approved by the agency's Board of Directors, or an Equivalent Authority.

(2) The Public Transportation Agency Safety Plan must document the processes and activities related to Safety Management System (SMS) implementation, as required under subpart C of this part.

(3) The Public Transportation Agency Safety Plan must include performance targets based on the safety performance measures established under the National Public Transportation Safety Plan.

(4) The Public Transportation Agency Safety Plan must address all applicable requirements and standards as set forth in FTA's Public Transportation Safety Program and the National Public Transportation Safety Plan. Compliance Start Printed Page 34467with the minimum safety performance standards authorized under 49 U.S.C. 5329(b)(2)(C) is not required until standards have been established through the public notice and comment process.

(5) Each transit agency must establish a process and timeline for conducting an annual review and update of the Public Transportation Agency Safety Plan.

(6) A rail transit agency must include or incorporate by reference in its Public Transportation Agency Safety Plan an emergency preparedness and response plan or procedures that addresses, at a minimum, the assignment of employee responsibilities during an emergency; and coordination with Federal,
State, regional, and local officials with roles and responsibilities for emergency preparedness and response in the transit agency's service area.

(b) A transit agency may develop one Public Transportation Agency Safety Plan for all modes of service, or may develop a Public Transportation Agency Safety Plan for each mode of service not subject to safety regulation by another Federal entity.

(c) A transit agency must maintain its Public Transportation Agency Safety Plan in accordance with the recordkeeping requirements in subpart D of this part.

(d) A State must draft and certify a Public Transportation Agency Safety Plan on behalf of any small public transportation provider that is located in that State. A State is not required to draft a Public Transportation Agency Safety Plan for a small public transportation provider if that agency notifies the State that it will draft its own plan. In each instance, the transit agency must carry out the plan. If a State drafts and certifies a Public Transportation Agency Safety Plan on behalf of a transit agency, and the transit agency later opts to draft and certify its own Public Transportation Agency Safety Plan, then the transit agency must notify the State. The transit agency has one year from the date of the notification to draft and certify a Public Transportation Agency Safety Plan that is compliant with this part. The Public Transportation Agency Safety Plan drafted by the State will remain in effect until the transit agency drafts its own Public Transportation Agency Safety Plan.

(e) Any rail fixed guideway public transportation system that had a System Safety Program Plan compliant with 49 CFR part 659 as of October 1, 2012, may keep that plan in effect until one year after July 19, 2019.

(f) Agencies that operate passenger ferries regulated by the United States Coast Guard (USCG) or rail fixed guideway public transportation service regulated by the Federal Railroad Administration (FRA) are not required to develop agency safety plans for those modes of service.

§ 673.13 Certification of compliance

(a) Each transit agency, or State as authorized in § 673.11(d), must certify that it has established a Public Transportation Agency Safety Plan meeting the requirements of this part one year after July 19, 2019. A State Safety Oversight Agency must review and approve a Public Transportation Agency Safety Plan developed by rail fixed guideway system, as authorized in 49 U.S.C. 5329(e) and its implementing regulations at 49 CFR part 674.

(b) On an annual basis, a transit agency, direct recipient, or State must certify its compliance with this part.

§ 673.15 Coordination with metropolitan, statewide, and non-metropolitan planning processes

(a) A State or transit agency must make its safety performance targets available to States and Metropolitan Planning Organizations to aid in the planning process.

(b) To the maximum extent practicable, a State or transit agency must coordinate with States and Metropolitan Planning Organizations in the selection of State and MPO safety performance targets.

Subpart C—Safety Management Systems

§ 673.21 General requirements

Each transit agency must establish and implement a Safety Management System under this part. A transit agency Safety Management System must be appropriately scaled to the size, scope and complexity of the transit agency and include the following elements:

(a) Safety Management Policy as described in § 673.23;

(b) Safety Risk Management as described in § 673.25;

(c) Safety Assurance as described in § 673.27; and

(d) Safety Promotion as described in § 673.29.
§ 673.23 Safety management policy
(a) A transit agency must establish its organizational accountabilities and responsibilities and have a written statement of safety management policy that includes the agency's safety objectives.
(b) A transit agency must establish and implement a process that allows employees to report safety conditions to senior management, protections for employees who report safety conditions to senior management, and a description of employee behaviors that may result in disciplinary action.
(c) The safety management policy must be communicated throughout the agency's organization.
(d) The transit agency must establish the necessary authorities, accountabilities, and responsibilities for the management of safety amongst the following individuals within its organization, as they relate to the development and management of the transit agency's Safety Management System (SMS):
   (1) Accountable Executive. The transit agency must identify an Accountable Executive. The Accountable Executive is accountable for ensuring that the agency's SMS is effectively implemented, throughout the agency's public transportation system. The Accountable Executive is accountable for ensuring action is taken, as necessary, to address substandard performance in the agency's SMS. The Accountable Executive may delegate specific responsibilities, but the ultimate accountability for the transit agency's safety performance cannot be delegated and always rests with the Accountable Executive.
   (2) Chief Safety Officer or Safety Management System (SMS) Executive. The Accountable Executive must designate a Chief Safety Officer or SMS Executive who has the authority and responsibility for day-to-day implementation and operation of an agency's SMS. The Chief Safety Officer or SMS Executive must hold a direct line of reporting to the Accountable Executive. A transit agency may allow the Accountable Executive to also serve as the Chief Safety Officer or SMS Executive.
   (3) Agency leadership and executive management. A transit agency must identify those members of its leadership or executive management, other than an Accountable Executive, Chief Safety Officer, or SMS Executive, who have authorities or responsibilities for day-to-day implementation and operation of an agency's SMS.
   (4) Key staff. A transit agency may designate key staff, groups of staff, or committees to support the Accountable Executive, Chief Safety Officer, or SMS Executive in developing, implementing, and operating the agency's SMS.

§ 673.25 Safety risk management
(a) Safety Risk Management process. A transit agency must develop and implement a Safety Risk Management process for all elements of its public transportation system. The Safety Risk Management process must be comprised of the following activities: Safety hazard identification, safety risk assessment, and safety risk mitigation.
(b) Safety hazard identification. (1) A transit agency must establish methods or processes to identify hazards and consequences of the hazards.
   (2) A transit agency must consider, as a source for hazard identification, data and information provided by an oversight authority and the FTA.
(c) Safety risk assessment. (1) A transit agency must establish methods or processes to assess the safety risks associated with identified safety hazards.
   (2) A safety risk assessment includes an assessment of the likelihood and severity of the consequences of the hazards, including existing mitigations, and prioritization of the hazards based on the safety risk.
(d) Safety risk mitigation. A transit agency must establish methods or processes to identify mitigations or strategies necessary as a result of the agency's safety risk assessment to reduce the likelihood and severity of the consequences.
§ 673.27 Safety assurance

(a) Safety assurance process. A transit agency must develop and implement a safety assurance process, consistent with this subpart. A rail fixed guideway public transportation system, and a recipient or subrecipient of Federal financial assistance under 49 U.S.C. Chapter 53 that operates more than one hundred vehicles in peak revenue service, must include in its safety assurance process each of the requirements in paragraphs (b), (c), and (d) of this section. A small public transportation provider only must include in its safety assurance process the requirements in paragraph (b) of this section.

(b) Safety performance monitoring and measurement. A transit agency must establish activities to:

(1) Monitor its system for compliance with, and sufficiency of, the agency's procedures for operations and maintenance;

(2) Monitor its operations to identify any safety risk mitigations that may be ineffective, inappropriate, or were not implemented as intended;

(3) Conduct investigations of safety events to identify causal factors; and

(4) Monitor information reported through any internal safety reporting programs.

(c) Management of change. (1) A transit agency must establish a process for identifying and assessing changes that may introduce new hazards or impact the transit agency's safety performance.

(2) If a transit agency determines that a change may impact its safety performance, then the transit agency must evaluate the proposed change through its Safety Risk Management process.

(d) Continuous improvement. (1) A transit agency must establish a process to assess its safety performance.

(2) If a transit agency identifies any deficiencies as part of its safety performance assessment, then the transit agency must develop and carry out, under the direction of the Accountable Executive, a plan to address the identified safety deficiencies.

§ 673.29 Safety promotion

(a) Competencies and training. A transit agency must establish and implement a comprehensive safety training program for all agency employees and contractors directly responsible for safety in the agency's public transportation system. The training program must include refresher training, as necessary.

(b) Safety communication. A transit agency must communicate safety and safety performance information throughout the agency's organization that, at a minimum, conveys information on hazards and safety risks relevant to employees' roles and responsibilities and informs employees of safety actions taken in response to reports submitted through an employee safety reporting program.

Subpart D—Safety Plan Documentation and Recordkeeping

§ 673.31 Safety plan documentation

At all times, a transit agency must maintain documents that set forth its Public Transportation Agency Safety Plan, including those related to the implementation of its Safety Management System (SMS), and results from SMS processes and activities. A transit agency must maintain documents that are included in whole, or by reference, that describe the programs, policies, and procedures that the agency uses to carry out its Public Transportation Agency Safety Plan. These documents must be made available upon request by the Federal Transit Administration or other Federal entity, or a State Safety Oversight Agency having jurisdiction. A transit agency must maintain these documents for a minimum of three years after they are created.
# Appendix 2 Safety Risk Matrix

## Safety Risk Matrix

<table>
<thead>
<tr>
<th>MIL-STD-882E</th>
<th>Safety Risk Assessment Matrix</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Severity</strong></td>
<td><strong>Catastrophic 1</strong></td>
</tr>
<tr>
<td><strong>Probability</strong></td>
<td></td>
</tr>
<tr>
<td>A - Frequent</td>
<td>1A</td>
</tr>
<tr>
<td>B - Probable</td>
<td>1B</td>
</tr>
<tr>
<td>C - Occasional</td>
<td>1C</td>
</tr>
<tr>
<td>D - Remote</td>
<td>1D</td>
</tr>
<tr>
<td>E - Improbable</td>
<td>1E</td>
</tr>
<tr>
<td>F - Eliminated</td>
<td></td>
</tr>
</tbody>
</table>

1A, 1B, 1C, 2A, 2B = High = Unacceptable
1D, 2C, 3A, 3B = Serious = Undesirable with management decision required
1E, 2D, 2E, 3C, 3D, 3E, 4A, 4B = Medium = Acceptable with review by management
4C, 4D, 4E = Low = Acceptable without review
Safety Risk Evaluation

Index

1A 1B 1C
2A 2B 3A
1D 2C
2D 3B 3C
4A 4B
3D
4C 4D 5A
5B 5C 5D

Suggested Criteria

Unacceptable under the existing circumstances
Acceptable based on an existing mitigation (it might require management involvement)
Acceptable
Appendix 3 Ohio Small Urban Public Transit

Ohio’s Small Urban Public Transit Systems

49 C.F.R Part 673 Definition
Small public transportation provider means a recipient or subrecipient of Federal financial assistance under 49 U.S.C. 5307 that has one hundred (100) or fewer vehicles in peak revenue service and does not operate a rail fixed guideway public transportation system.

Transit Systems

Allen County Regional Transit Authority
Eastern Ohio Regional Transit Authority
Butler County Regional Transit Authority / Middletown Transit System
Springfield City Area Transit
Clermont Transit Connection
Delaware County Transit
Greene CATS
Steel Valley Regional Transit Authority
Laketran
Lawrence County Transit
Licking County Transit
Lorain County Transit
Toledo Area Regional Transit Authority
Western Reserve Transit Authority
Medina County Transit
Miami County Transit
Portage Area Regional Transportation Authority
Richland County Transit
Stark Area Regional Transit Authority
Trumbull County Transit
Warren County Transit Service
# Appendix 4 Butler County RTA Pre Hire Checklist

<table>
<thead>
<tr>
<th>Task Type</th>
<th>Task Description</th>
<th>Complete By</th>
<th>Associated With</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Upload Completed Employment Application</td>
<td>On Boarding</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Upload DOT Reference Form AUTHORIZED by Employees</td>
<td>On Boarding</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Upload Pre Employment Bus Orientation</td>
<td>On Boarding</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Offer Letter upload</td>
<td>On Boarding</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Send for Background Check</td>
<td>On Boarding</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Send for Physical/DOT/Agility Exam</td>
<td>On Boarding</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Send for Drug Screen</td>
<td>On Boarding</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Physical/DOT/Agility Exam Schedded</td>
<td>On Boarding</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Physical/DOT/Agility Exam Completed</td>
<td>On Boarding</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Drug Screen Complete</td>
<td>On Boarding</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Background Check Compliance</td>
<td>On Boarding</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Upload Bus Driver Registry Notice</td>
<td>On Boarding</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Upload Driver License</td>
<td>On Boarding</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Check Ohio DMV abstract</td>
<td>On Boarding</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Upload Driver License Abstract</td>
<td>On Boarding</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Physical/DOT/Agility Exam Upload</td>
<td>On Boarding</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Drug Screen upload</td>
<td>On Boarding</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Upload Background Check</td>
<td>On Boarding</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Email Employee to Driver Record Monitoring</td>
<td>On Boarding</td>
<td></td>
</tr>
<tr>
<td></td>
<td>SSA-1941</td>
<td>On Boarding</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Health Insurance Marketplace</td>
<td>On Boarding</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Learn About CREDS</td>
<td>On Boarding</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2-10 (Employee)</td>
<td>On Boarding</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1-9 (Employee)</td>
<td>On Boarding</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Make Social Security Exempt</td>
<td>On Boarding</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Add PERC Deductions</td>
<td>On Boarding</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Add Accidents</td>
<td>On Boarding</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Confirm Direct Deposit</td>
<td>On Boarding</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Enter in MERS</td>
<td>On Boarding</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Add to Healing List</td>
<td>On Boarding</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Check Ohio DD (Driver Registry)</td>
<td>On Boarding</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Upload Driver Registry Results</td>
<td>On Boarding</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Upload REO Docs</td>
<td>On Boarding</td>
<td></td>
</tr>
</tbody>
</table>
DATE: August 7, 2020

TO: Susan Cohen, Director of Administrative Services

FROM: Ida Hawkins, Administrative Services Paralegal

PURPOSE
To request City Council to authorize the transfer of property to adjacent property owners through the Vacant Side Lot Program.

BACKGROUND AND FINDINGS
The City has acquired properties in various ways over many years, some structures were demolished with Land Bank grant funds, some at the then owner’s expense. The City has incurred fees against some of the properties for maintenance over the past two years. Sales of City-owned property have been mostly frozen while the Housing Study was completed and a new plan was developed.

Citizens were afforded the opportunity to submit a letter of interest form requesting to purchase vacant properties to extend their current lots when the City decided that the parcels were no longer needed for a municipal purpose. Per the requirements of the program, all lots are being sold for $500, except when the fees accrued over the last two years are in excess of that amount, in which case the lot will be sold for the higher amount. The list of lots to be sold is below:

<table>
<thead>
<tr>
<th>PARCEL NO.</th>
<th>ADDRESS</th>
<th>STREET</th>
<th>CoM FEES</th>
<th>INTERESTED PARTY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q6542031000183</td>
<td>621</td>
<td>CRAWFORD ST</td>
<td>$973.25</td>
<td>Sager, Jodi and Jerry</td>
</tr>
<tr>
<td>Q6542031000074</td>
<td>626</td>
<td>CRAWFORD ST</td>
<td>$920.00</td>
<td>Mashburn, Stephanie</td>
</tr>
<tr>
<td>Q652102700007</td>
<td>808</td>
<td>EIGHTH AVE</td>
<td>$220.00</td>
<td>Thompson, Danny and Tammy</td>
</tr>
<tr>
<td>Q6542119000016</td>
<td>3204</td>
<td>MORGAN ST</td>
<td>$1,020.00</td>
<td>Lovejoy, Tamara (Mann)</td>
</tr>
<tr>
<td>Q6542104000033</td>
<td>3001</td>
<td>NAVAHO ST</td>
<td>$1,160.00</td>
<td>Fields, Richard and Patricia</td>
</tr>
<tr>
<td>Q65421030000124</td>
<td>3229</td>
<td>NAVAHO ST</td>
<td>$-</td>
<td>Snelling, Kelly and Mary</td>
</tr>
<tr>
<td>Q6521028000040</td>
<td>847</td>
<td>NINTH AVE</td>
<td>$340.00</td>
<td>Thompson, Beatrice</td>
</tr>
<tr>
<td>Q6532027000051</td>
<td>1822</td>
<td>NORTH AVE</td>
<td>$-</td>
<td>Egleston, Charlie</td>
</tr>
<tr>
<td>Q6542046000072</td>
<td>3108</td>
<td>SELDEN AVE</td>
<td>$213.25</td>
<td>Keith, Roy</td>
</tr>
<tr>
<td>Q6521031000030</td>
<td>818</td>
<td>TENTH AVE</td>
<td>$300.00</td>
<td>Robinson, David</td>
</tr>
<tr>
<td>Q651103400000007</td>
<td>3035</td>
<td>TYTUS AVE</td>
<td>$-</td>
<td>Soppanish, Rhonda and John</td>
</tr>
<tr>
<td>Q6511035000108</td>
<td>3100</td>
<td>YALE DR</td>
<td>$160.00</td>
<td>John Pierce</td>
</tr>
<tr>
<td>Q65420390000200</td>
<td>2024</td>
<td>YANKEE RD</td>
<td>$933.25</td>
<td>Rick Woo</td>
</tr>
</tbody>
</table>
All of the parties listed above have met the requirements of the Vacant Side Lot Program discussed with Council June 16, 2020, and all have been confirmed to be current on all city taxes, have no outstanding property maintenance code violations and have obligated themselves to maintain the property in compliance with our zoning code.

**ALTERNATIVES**
Council may choose to not transfer the property. The City would need to continue to pay the cost to mow and maintain the property. Currently the City pays contractors a rate of approximately $40 per hour for mowing, and tree removal can be upwards of $5,000 per tree when needed.

**FINANCIAL IMPACTS**
Transferring the properties means that the City is no longer responsible for the cost of maintenance of the properties. The City will recoup some of the money it has expended for maintenance and homeowner’s property values will rise with the extra land.

**EMERGENCY/NON EMERGENCY**
Non-Emergency. MOTION AGENDA
LEGISLATION
ITEM 1
RESOLUTION NO. R2020-24

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A GRANT AND ENTER INTO A GRANT AGREEMENT FOR THE 2020 COPS HIRING PROGRAM WITH THE U.S. DEPARTMENT OF JUSTICE.

WHEREAS, the City has applied for and been approved to receive a 2020 COPS Hiring Program Grant from the U.S. Department of Justice; and

WHEREAS, the grant will fund 75% of the approved entry-level salaries and fringe benefits for two new patrol officers for three years;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Middletown, Butler/Warren Counties, Ohio that:

Section 1

The City Manager is authorized to accept a $250,000.00 grant on behalf of the City of Middletown for the 2020 COPS Hiring Program to be used to hire two new patrol officers for a period of three years. The City Manager is further authorized to enter into the necessary grant agreement to receive and administer the grant. The grant agreement documents shall be subject to the review and approval of the Law Director and City Manager.

Section 2

It is hereby determined that the subject matter of this legislation is not of a general and permanent nature, does not provide for a public improvement and does not assess a tax or payment.

Section 3

This resolution shall be effective at the earliest time permitted by law.

Nicole Condrey, Mayor

1st Reading: August 4, 2020
2nd Reading: August 18, 2020
Adopted: _________
Effective: _________

Attest: ______________________
Clerk of City Council
DATE: July 31, 2010

TO: Mayor & City Council

FROM: James M. (Jim) Palenick, City Manager

**PURPOSE:**

On behalf of the Middletown Police Department, we are requesting that the City Council authorize the acceptance of $250,000 in 2020 U.S. Department of Justice C.O.P.S Grant funds to support the hiring of two additional police officers – allowing for the creation of a two-member, Community Oriented Policing (COP) unit.

**BACKGROUND AND FINDINGS:**

Each year the U.S. Department of Justice puts out a call for the competitive award of grant funds to Municipal and County law enforcement agencies to fund a portion of the costs associated with the hiring of additional sworn officers, with particular emphasis on the establishment and furtherance of Community Oriented Policing (C.O.P.) programs and strategies. The Middletown Police Department submitted, and was awarded, the maximum available grant under this year’s program guidelines and awards, -- being $250,000, to hire two (2) additional sworn police officers over a three-year (36 month) period covering Fiscal year’s 2021, 2022, and 2023.

The municipal awardee (Middletown Police) is subsequently responsible to then fund the remaining, non-federal portion of the grant for the three years in question, as well as committing to maintain the positions for at least one year (12 months) post-grant expiration – in this case representing FY 2024. This “local-match” requirement must further increase each year of the grant period resulting in the City’s local match requirements working out to 30% in 2021; 34% in 2022; and 36% in 2023. The 2024 commitment would then require 100% local funding.

We fully expect that seven (7) and possibly eight (8) long-tenured and vested sworn police officers will retire by the conclusion of 2021. The expenditures saved in the process of replacing senior officers with new hires (as well as with the planned, two-month vacancy delay within the hiring process) will result in the City “saving” approximately $83,056 per officer replaced over the first five years. These savings will more than cover the increased cost to the City for the “local match” during the same period.

Long-standing and well-developed standards across the country would indicate that, depending on a number of factors including historic crime rate, types of land uses, and local
financial capacity, a community should employ between 1.8 to 2.4 sworn law enforcement officers per 1,000 population. In Middletown’s case, even if we add the two (2) new officers as contemplated to our FY2020-budgeted and authorized force of seventy-one (71) – resulting in base staffing of seventy-three (73); we would still be below standards and “under-staffed”, with slightly less-than 1.5 officers per 1,000 population.

ALTERNATIVES:

Alternative 1: Authorize acceptance of the 2020 USDOJ COPS Grant for $250,000 to assist in funding the addition of two, (2) sworn police officers for the Middletown Police Department so that, in turn, a two-member Community Oriented Policing Unit might be formed to partner with our citizens, businesses and neighborhoods in a more targeted and strategic manner to further safety, security and crime prevention. Funding the City’s local-match requirement through savings achieved via the expected retirements of long-tenured, senior officers.

Alternative 2: Decline the $250,000 COPS Grant award and do not add two, (2) sworn police officers to the Middletown Police Department – achieving the contemplated retirement savings while maintaining the status quo and not developing the new, 2-member Community Oriented Policing Unit.

Alternative 3: Decline the $250,000 COPS Grant award and, instead attempt to find and fund $250,000 in local, General Fund dollars to substitute for the Federal Grant and add two, (2) sworn police officers to the Middletown Police Department so that, in turn, a two-member Community Oriented Policing Unit might be formed to partner with our citizens, businesses and neighborhoods in a more targeted and strategic manner to further safety, security and crime prevention.

FINANCIAL IMPACTS:

As shown in the attached June, 2020 “Analysis for COPS Grant”, the savings achieved from the expected officer retirements in FY2021, 22, and 23 (the years of the Grant) will result in savings to the Police Budget of $636,964. In turn, the local match cost of the Grant award for those three years will add back $330,478 in Department costs, resulting in a net effective cost decrease for the Department for those years of $306,486. Then, for the 1-year (FY2024) post-completion retention period, the City’s retirement savings will be $204,680, while the cost of the two additional officers will be $330,479 resulting in a net increase to budget of $125,799. Meaning that, worst case scenario, if we were compelled to eliminate the two additional positions following FY2024 because of financial or other locally-determined policy reasons, our net result would be to have effectively utilized $250,000 of Federal monies while seeing a corresponding requirement for local funds increases of $125,799.

RECOMMENDATION:

Alternative 1: Authorize acceptance of the 2020 USDOJ COPS Grant for $250,000 to assist in funding the addition of two, (2) sworn police officers for the Middletown Police Department so that, in turn, a two-member Community Oriented Policing Unit might be formed to partner with our citizens, businesses and neighborhoods in a more targeted and strategic manner to further safety, security and crime prevention. Funding the City’s local-match requirement through savings achieved via the expected retirements of long-tenured, senior officers.
CONFORMITY TO CITY POLICY:

There exist no known or identified conflicts with City policy in the acceptance and implementation of this Federal Grant Award.

DEPARTMENTAL CLEARANCES:

City Manager
Legal review

EMERGENCY/NON-EMERGENCY:

Non-emergency legislation is requested. The award is required to be accepted to the U.S. Department of Justice by the end of the business day on September 18, 2020. This date is effective after being granted an extension.

ATTACHMENTS:

June 2020 Savings Analysis for COPS Grant
### Savings per year of Retired Officer vs New Hire

<table>
<thead>
<tr>
<th>Year</th>
<th>Savings</th>
<th>Savings from leaving retired position vacant 2 months</th>
<th>Total Savings per retirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>20,663</td>
<td>14,150</td>
<td>34,813</td>
</tr>
<tr>
<td>2</td>
<td>17,380</td>
<td></td>
<td>17,380</td>
</tr>
<tr>
<td>3</td>
<td>13,943</td>
<td></td>
<td>13,943</td>
</tr>
<tr>
<td>4</td>
<td>10,344</td>
<td></td>
<td>10,344</td>
</tr>
<tr>
<td>5</td>
<td>6,576</td>
<td></td>
<td>6,576</td>
</tr>
<tr>
<td>TOTAL</td>
<td>68,906</td>
<td></td>
<td>83,056</td>
</tr>
</tbody>
</table>

### # of Retirements vs Total Savings vs Grant Costs vs Costs (Savings)

<table>
<thead>
<tr>
<th>Year</th>
<th># of Retirements</th>
<th>Total Savings</th>
<th>Grant Costs</th>
<th>Costs (Savings)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>7</td>
<td>243,691</td>
<td>99,143</td>
<td>(144,548)</td>
</tr>
<tr>
<td>2022</td>
<td>2</td>
<td>191,286</td>
<td>112,363</td>
<td>(78,923)</td>
</tr>
<tr>
<td>2023</td>
<td>2</td>
<td>201,987</td>
<td>118,972</td>
<td>(83,015)</td>
</tr>
<tr>
<td>2024</td>
<td>2</td>
<td>204,680</td>
<td>330,479</td>
<td>125,799</td>
</tr>
<tr>
<td>2025</td>
<td>2</td>
<td>198,992</td>
<td>340,393</td>
<td>141,401</td>
</tr>
<tr>
<td>TOTAL</td>
<td>15</td>
<td>1,040,636</td>
<td>1,001,350</td>
<td>(39,286)</td>
</tr>
</tbody>
</table>

** Savings are average amounts. Actual savings will vary based upon health insurance of the retiree and new hire **
LEGISLATION
ITEM 2
ORDINANCE NO. O2020-39

AN ORDINANCE AUTHORIZING A CONTRACT WITH THE GREAT LAKES CONSTRUCTION CO. FOR REPAIRS TO THE UNIVERSITY BOULEVARD BRIDGE AND DECLARING AN EMERGENCY.

WHEREAS, the City sought bids for repairs to the University Boulevard bridge; and

WHEREAS, seven contractors submitted bids for the project:

<table>
<thead>
<tr>
<th>Contractor</th>
<th>Bid Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Great Lakes Construction Co.</td>
<td>$2,873,483.00</td>
</tr>
<tr>
<td>Eagle Bridge Co.</td>
<td>$2,964,608.95</td>
</tr>
<tr>
<td>Sunesis Construction Co.</td>
<td>$3,110,852.68</td>
</tr>
<tr>
<td>Complete General Construction Co.</td>
<td>$3,113,554.40</td>
</tr>
<tr>
<td>Brumbaugh Construction, Inc.</td>
<td>$3,114,826.00</td>
</tr>
<tr>
<td>Kokosing Construction Company, Inc.</td>
<td>$3,148,032.14</td>
</tr>
<tr>
<td>Prus Construction Co.</td>
<td>$3,294,410.58</td>
</tr>
</tbody>
</table>

WHEREAS, City Council hereby determines that The Great Lakes Construction Co. submitted the lowest and best bid;

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Middletown, Butler/Warren Counties, Ohio that:

Section 1

The City Manager is hereby authorized to enter into a contract with The Great Lakes Construction Co. for repairs to the University Boulevard bridge. The contract shall be consistent with the contractor's bid therefor, and in a form acceptable to the Law Director and City Manager.

Section 2

For said purposes the Finance Director is authorized and directed to expend a sum not to exceed $2,873,483.00, the City’s share to be paid as follows:

- Capital Improvement Fund (Fund # 220), $750,000.00;
- Stormwater Capital Reserve Fund (Fund # 415), $1,073,483.00, of which $573,483.00 is hereby appropriated to the accounts of 838 (415.838.54501); and
- Auto & Gas Tax Fund (Fund # 210), $250,000.00, which is hereby appropriated to the accounts of 541 (210.541.52980).
- The remaining $800,000.00 will be paid by the Ohio Public Works Commission upon certification by the City that the work has been completed.
Section 3

This ordinance is declared to be an emergency measure necessary for the immediate preservation of the public health, safety and general welfare, to wit: to permit the contractor to begin construction during the 2020 season, shall take effect and be in force at the earliest time permitted by law.

Nicole Condrey, Mayor

Adopted:______________

Attest:____________________

   Clerk of the City Council
DATE: July 15, 2020

TO: James Palenick, City Manager

FROM: Scott Tadych, Public Works and Utilities Director
       Prepared by Rob Nicolls, City Engineer

PURPOSE

Authorize the City Manager to enter into a contract with The Great Lakes Construction Co. to proceed with the University Blvd. Bridge project and authorize a supplemental appropriation.

BACKGROUND AND FINDINGS

The City is proposing to proceed with the University Blvd. Bridge project which consists of replacing the bridge deck and associated repairs on the University Blvd. bridge over the Norfolk Southern railroad between Roosevelt Blvd. and 14th Ave. Construction is scheduled to begin this fall and be completed in 2021.

Seven contractors submitted a bid for the project. The Great Lakes Construction Co. submitted the lowest and best bid.

ALTERNATIVES

Defer replacement of the bridge deck to a later date.

FINANCIAL IMPACTS

The lowest bid received for this project on July 15, 2020 was $2,873,483.00 which is 12% lower than the engineer’s estimate and 3% lower than the next bidder.

The project will be funded as follows:

<table>
<thead>
<tr>
<th>Fund</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>OPWC Grant</td>
<td>$800,000</td>
</tr>
<tr>
<td>General Capital Fund (220)</td>
<td>$750,000</td>
</tr>
<tr>
<td>Storm Water Capital Fund (415)</td>
<td>$1,073,483 of which $573,483 needs appropriated</td>
</tr>
<tr>
<td>Auto &amp; Gas Tax Fund (210)</td>
<td>$250,000 which needs appropriated</td>
</tr>
</tbody>
</table>
EMERGENCY/NON EMERGENCY

Emergency. Second Reading emergency is requested in order to allow as much time as possible for construction during the 2020 season.

ATTACHMENTS

Vicinity Map
Bid Tab
# UNIVERSITY BLVD. BRIDGE

## BID TABULATION

**LEGAL NOTICE NO. 20-8150**  
**BIDS RECEIVED:** July 15, 2020

<table>
<thead>
<tr>
<th>CONTRACTOR’S NAME &amp; ADDRESS</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ENGINEER’S ESTIMATE</strong></td>
<td>$ 3,268,804.96</td>
</tr>
<tr>
<td><strong>THE GREAT LAKES CONSTRUCTION CO.</strong></td>
<td>$ 2,873,483.00</td>
</tr>
<tr>
<td>2608 Great Lakes Way</td>
<td></td>
</tr>
<tr>
<td>Hinckley, OH  44233</td>
<td></td>
</tr>
<tr>
<td><strong>EAGLE BRIDGE CO.</strong></td>
<td>$ 2,964,608.95</td>
</tr>
<tr>
<td>800 S. Van Demark Road</td>
<td></td>
</tr>
<tr>
<td>Sidney, OH  45365</td>
<td></td>
</tr>
<tr>
<td><strong>SUNESIS CONSTRUCTION CO.</strong></td>
<td>$ 3,110,852.68</td>
</tr>
<tr>
<td>2610 Crescentville Road</td>
<td></td>
</tr>
<tr>
<td>West Chester, OH  45069</td>
<td></td>
</tr>
<tr>
<td><strong>COMPLETE GENERAL CONSTRUCTION COMPANY</strong></td>
<td>$ 3,113,554.40</td>
</tr>
<tr>
<td>1221 E. Fifth Avenue</td>
<td></td>
</tr>
<tr>
<td>Columbus, OH  43219</td>
<td></td>
</tr>
<tr>
<td><strong>BRUMBAUGH CONSTRUCTION INC.</strong></td>
<td>$ 3,114,826.00</td>
</tr>
<tr>
<td>3520 St. Rt. 49</td>
<td></td>
</tr>
<tr>
<td>Arcanum, oH  45304</td>
<td></td>
</tr>
<tr>
<td><strong>KOKOSING CONSTRUCTION COMPANY, INC.</strong></td>
<td>$ 3,148,032.14</td>
</tr>
<tr>
<td>6235 Westerville Road</td>
<td></td>
</tr>
<tr>
<td>Westerville, OH  43081</td>
<td></td>
</tr>
<tr>
<td><strong>PRUS CONSTRUCTION CO.</strong></td>
<td>$ 3,294,410.58</td>
</tr>
<tr>
<td>5325 Wooster Road</td>
<td></td>
</tr>
<tr>
<td>Cincinnati, OH  45226</td>
<td></td>
</tr>
</tbody>
</table>

The Great Lakes Construction Co. was the low bid in the amount of $ 2,873,483.00 which is 12% under the Engineer’s Estimate of $ 3,268,804.96
LEGISLATION
ITEM 3
ORDINANCE NO. O2020-40

AN ORDINANCE AUTHORIZING A CONTRACT WITH NORFOLK SOUTHERN RAILWAY COMPANY RELATED TO THE REPAIRS TO THE UNIVERSITY BOULEVARD BRIDGE AND DECLARING AN EMERGENCY.

WHEREAS, the University Boulevard bridge crosses over Norfolk Southern’s railroad tracks; and

WHEREAS, the City will pay Norfolk Southern for their costs related to construction engineering and railroad protective services in order for the City to complete this bridge project; and

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Middletown, Butler/Warren Counties, Ohio that:

Section 1

The City Manager is hereby authorized to enter into a contract with Norfolk Southern Railway Company for their costs for construction engineering and railroad protective services related to the repairs to the University Boulevard bridge over the railroad tracks. The contract shall be substantially similar to Attachment “1”, attached hereto, and be approved by the Law Director and City Manager.

Section 2

For said purposes the Finance Director is authorized and directed to expend a sum not to exceed $207,336.00 from the Capital Improvement Fund (Fund # 220), which such sum is hereby appropriated to the accounts of 817 (220.817.54520).

Section 3

This ordinance is declared to be an emergency measure necessary for the immediate preservation of the public health, safety and general welfare, to wit: to prevent delay in paying for costs associated with the bridge project as it begins during the 2020 construction season, shall take effect and be in force at the earliest time permitted by law.

Nicole Condrey, Mayor

Adopted:______________

Attest:__________________

Clerk of the City Council
THIS AGREEMENT, dated as of the ____ day of ____________, 20__ is made and entered into by and between

NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation, whose mailing address is Three Commercial Place, Norfolk, Virginia 23510 (hereinafter called “RAILWAY”); and

CITY OF MIDDLETOWN, an Ohio Municipality, whose mailing address is One Donham Plaza, Middletown, Ohio 45042-1932 (hereinafter called "LICENSEE").

RECITALS

WHEREAS, LICENSEE, at its own cost and expense, has found it necessary to replace the deck of the existing University Boulevard overhead bridge structure (DOT# 524681D) (the “Facilities”), in the vicinity of RAILWAY Milepost CJ-229.55, at or near Middletown, Butler County, Ohio (the “Premises”), located substantially as shown upon print of Drawing marked Exhibit A; and

WHEREAS, RAILWAY is willing to permit LICENSEE to enter upon RAILWAY’s right of way for installation, construction, maintenance, operation and removal of the Facilities upon the terms and conditions of this Agreement; and in accordance with the plans and specifications attached hereto by reference upon approval of said plans, specifications or revisions by RAILWAY; and

WHEREAS, RAILWAY is willing, at LICENSEE’s sole expense, to make modifications to RAILWAY’s right of way and/or appurtenances rendered necessary by LICENSEE’s installation, construction, maintenance, operation and removal of its Facilities in accordance with the force account estimate marked Exhibit C.

NOW THEREFORE, for and in consideration of the premises and mutual covenants contained in this Agreement, the parties agree as follows:

I. LICENSEE’S FACILITIES

1. Right-of-Entry. RAILWAY, insofar as its rights and title enables it to do so and subject to its rights to operate and maintain its RAILWAY and RAILWAY appurtenances along, in, and over its right-of-way, grants LICENSEE, its agents and/or contractors, without compensation, the right to enter upon the Premises, for the purpose of installation, construction, maintenance, operation and removal of the Facilities, provided that, prior to entry upon lands of RAILWAY, any agent and/or contractor of LICENSEE must execute and deliver to RAILWAY a standard contractor right-of-entry agreement in a form approved by RAILWAY in its sole discretion, together with any certificate(s) of insurance required therein. Furthermore, any crossing of RAILWAY tracks by LICENSEE or any of its agents and/or contractors must be addressed by a standard temporary crossing agreement in a form approved by RAILWAY in its sole discretion.

2. Use and Condition of the Premises. The Premises shall be used by LICENSEE only for the installation, construction, maintenance, operation and removal of the Facilities and for no other purpose without the prior written consent of RAILWAY, which consent may be withheld by RAILWAY in its sole discretion. LICENSEE accepts the Premises in their current "as is" condition, as suited for the installation and operation of the Facilities, and without the benefit of any improvements to be constructed by RAILWAY except insofar as contemplated by Section II of this Agreement.

3. Construction and Maintenance of the Facilities. LICENSEE shall construct and maintain the Facilities, at its expense, in such a manner as will not interfere with the operations of RAILWAY or endanger persons or property of RAILWAY, and in accordance with (a) plans and specifications (if any) attached hereto by reference upon approval of said plans, specifications or revisions by RAILWAY and any other specifications prescribed by RAILWAY, (b) applicable governmental regulations or laws, and (c)
applicable specifications adopted by the American Railway Engineering and Maintenance of Way Association when not in conflict with plans, specifications or regulations mentioned in (a) and (b) above. LICENSEE and any and all of LICENSEE contractors entering the Premises shall fully comply with applicable roadway worker protection regulations.

4. **Indemnification.** LICENSEE hereby agrees to indemnify and save harmless RAILWAY, its officers, agents and employees, from and against any and all liability, claims, losses, damages, expenses (including attorneys' fees) or costs for personal injuries (including death) and/or property damage to whomsoever or whatsoever occurring which arises or in any manner grows out of (a) the presence of LICENSEE, its employees, agents and/or contractors on or about the Premises, regardless of whether negligence on the part of RAILWAY, its officers, agents or employees caused or contributed to said loss of life, personal injury or property loss or damage in whole or in part; (b) any allegation that RAILWAY is an employer or joint employer of a LICENSEE or is liable for related employment benefits or tax withholdings; or (c) any decision by RAILWAY to bar or exclude LICENSEE from the Premises pursuant to the terms of this Agreement.

5. **Environmental Matters.** LICENSEE assumes all responsibility for any environmental obligations imposed under applicable laws, regulations or ordinances relating to the installation of the Facilities and/or to any contamination of any property, water, air or groundwater arising or resulting from LICENSEE's permitted operations or uses of RAILWAY's property pursuant to this Agreement. In addition, LICENSEE shall obtain any necessary permits to install the Facilities. LICENSEE agrees to indemnify and hold harmless RAILWAY from and against any and all liability, fines, penalties, claims, demands, costs (including attorneys' fees), losses or lawsuits brought by any person, company or governmental entity relating to contamination of any property, water, air or groundwater due to the use or presence of the Facilities. It is agreed that this indemnity provision extends to any cleanup costs related to LICENSEE's activities upon RAILWAY's property and to any costs related to cleanup of the Facilities or to other property caused by the use of the Facilities.

6. **Insurance.**

   (a) Without limiting in any manner the liabilities and obligations assumed by LICENSEE under any other provision of this Agreement, and as additional protection to RAILWAY, LICENSEE shall, at its expense, procure and maintain with insurance companies satisfactory to RAILWAY, the following insurance policies:

   (i) A Commercial General Liability Insurance Policy having a combined single limit of not less than $2,000,000 per occurrence for all loss, damage, cost and expense, including attorneys' fees, arising out of bodily injury liability and property damage liability during the policy period. Said policy shall include explosion, collapse, and underground hazard (XCU) coverage, shall be endorsed to name RAILWAY as the certificate holder and as an additional insured, and shall include a severability of interests provision; and,

   (ii) An original Railroad Protective Liability Insurance Policy naming RAILWAY as a named insured and having a combined single limit of not less than $2,000,000 each occurrence and $6,000,000 in the aggregate applying separately to each annual period. If the project involves track over which passenger trains operate, the insurance limits required are not less than a combined single limit of $5,000,000 each occurrence and $10,000,000 in the aggregate applying separately to each annual period.

   (b) All insurance required under the preceding subsection (a) shall be underwritten by insurers and be of such form and content, as may be acceptable to RAILWAY. Prior to the commencement of installation or maintenance of the Facilities or any entry on RAILWAY's property, LICENSEE shall furnish to RAILWAY's Director Risk Management, Three Commercial Place, Norfolk, Virginia 23510-2191 (or such other representative and/or address as subsequently given by RAILWAY to LICENSEE in writing), for
approval, the original policy described in subsection (a)(ii) and a certificate of insurance evidencing the existence of a policy with the coverage described in subsection (a)(i).

7. Railway Support. RAILWAY shall, at RAILWAY's option, furnish, at the sole expense of LICENSEE, labor and materials necessary, in RAILWAY's sole judgment, to support its tracks and to protect its traffic (including, without limitation, flagging) during the installation, maintenance, repair, renewal or removal of the Facilities.

8. Special Provisions for Protection of Railway Interests. In connection with the operation and maintenance of the Facilities, it is agreed that the safety of people and the safety and continuity of RAILWAY's rail operations shall be of first importance. LICENSEE shall require its employees, agents, contractors, and invitees to utilize and comply with RAILWAY's directives in this regard and shall require its contractor(s), if any, to comply with all NSR Special Provisions, attached hereto, and herein incorporated by reference, including any future amendments, as Exhibit B. As used in the NSR Special Provisions, LICENSEE is the "contractor" should LICENSEE enter onto the Premises to perform any work contemplated by this Agreement. To ensure such compliance, LICENSEE shall assign a project manager to function as a single point-of-contact for LICENSEE. Said project manager is referred to as the "Sponsor's Engineer" in Exhibit B.

9. Safety of Railway Operations. If RAILWAY becomes aware of any safety violations committed by LICENSEE, its employees, agents and/or contractors, RAILWAY shall so notify LICENSEE, and LICENSEE shall promptly correct such violation. In the event of an emergency threatening immediate danger to persons or property, RAILWAY may take corrective actions and shall notify LICENSEE promptly thereafter. LICENSEE shall reimburse RAILWAY for actual costs incurred in taking such emergency measures. RAILWAY assumes no additional responsibility for safety on the Premises for LICENSEE, its agents/or contractors by taking these corrective actions, and LICENSEE, its agents/contractors shall retain full responsibility for such safety violations.

10. Corrective Measures. If LICENSEE fails to take any corrective measures requested by RAILWAY in a timely manner, or if an emergency situation is presented which, in RAILWAY's judgment, requires immediate repairs to the Facilities, RAILWAY, at LICENSEE's expense, may undertake such corrective measures or repairs as it deems necessary or desirable.

11. Railway Changes. If RAILWAY shall make any changes, alterations or additions to the line, grade, tracks, structures, roadbed, installations, right-of-way or works of RAILWAY, or to the character, height or alignment of the Electronic Systems, at or near the Facilities, LICENSEE shall, upon thirty (30) days prior written notice from RAILWAY and at its sole expense, make such changes in the location and character of the Facilities as, in the opinion of the chief engineering officer of RAILWAY, shall be necessary or appropriate to accommodate any construction, improvements, alterations, changes or additions of RAILWAY.

12. Assumption of Risk. Unless caused solely by the negligence of RAILWAY or caused solely by the willful misconduct of RAILWAY, LICENSEE hereby assumes all risk of damage to the Facilities and LICENSEE's other property relating to its use and occupation of the Premises or business carried on the Premises and any defects to the Premises; and LICENSEE hereby declares and states that RAILWAY, its officers, directors, agents and employees shall not be responsible for any liability for such damage.

13. Liens; Taxes. LICENSEE will not permit any mechanic's liens or other liens to be placed upon the Premises, and nothing in this Agreement shall be construed as constituting the consent or request of RAILWAY, express or implied, to any person for the performance of any labor or the furnishing of any materials to the Premises, nor as giving LICENSEE any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that could give rise to any mechanic's liens or other liens against the Premises. In addition, LICENSEE shall be liable for all taxes levied or assessed against the Facilities and any other equipment or other property placed by LICENSEE within the Premises. In the event that any such lien shall attach to the Premises or LICENSEE shall fail to pay such taxes, then, in addition to any other right or remedy available to RAILWAY, RAILWAY may, but shall not be obligated to, discharge the same. Any amount paid by RAILWAY for any of the aforesaid purposes, together with related court costs, attorneys' fees, fines and penalties, shall be paid by LICENSEE to RAILWAY within ten (10) days after RAILWAY's demand therefor.
14. Default; Remedies.

(a) The following events shall be deemed to be events of default by LICENSEE under this Agreement:

(i) LICENSEE shall fail to pay any sum of money due hereunder and such failure shall continue for a period of ten (10) days after the due date thereof;

(ii) LICENSEE shall fail to comply with any provision of this Agreement not requiring the payment of money, all of which terms, provisions and covenants shall be deemed material, and such failure shall continue for a period of thirty (30) days after written notice of such default is delivered to LICENSEE;

(iii) LICENSEE shall become insolvent or unable to pay its debts as they become due, or LICENSEE notifies RAILWAY that it anticipates either condition;

(iv) LICENSEE takes any action to, or notifies RAILWAY that LICENSEE intends to file a petition under any section or chapter of the United States Bankruptcy Code, as amended from time to time, or under any similar law or statute of the United States or any State thereof; or a petition shall be filed against LICENSEE under any such statute; or

(v) a receiver or trustee shall be appointed for LICENSEE's license interest hereunder or for all or a substantial part of the assets of LICENSEE, and such receiver or trustee is not dismissed within sixty (60) days of the appointment.

(b) Upon the occurrence of any event or events of default by LICENSEE, whether enumerated in this paragraph 15 or not, RAILWAY shall have the option to pursue any remedies available to it at law or in equity without any additional notices to LICENSEE. RAILWAY's remedies shall include, but not be limited to, the following: (i) termination of this Agreement, in which event LICENSEE shall immediately surrender the Premises to RAILWAY; (ii) entry into or upon the Premises to do whatever LICENSEE is obligated to do under the terms of this License, in which event LICENSEE shall reimburse RAILWAY on demand for any expenses which RAILWAY may incur in effecting compliance with LICENSEE's obligations under this License, but without rendering RAILWAY liable for any damages resulting to LICENSEE or the Facilities from such action; and (iii) pursuit of all other remedies available to RAILWAY at law or in equity, including, without limitation, injunctive relief of all varieties.

15. Railway Termination Right. Notwithstanding anything to the contrary in this Agreement, RAILWAY shall have the right to terminate this Agreement and the rights granted hereunder, after delivering to LICENSEE written notice of such termination no less than sixty (60) days prior to the effective date thereof, upon the occurrence of any one or more of the following events:

(a) If LICENSEE shall discontinue the use or operations of the Facilities; or

(b) If RAILWAY shall be required by any governmental authority having jurisdiction over the Premises to remove, relocate, reconstruct or discontinue operation of its railroad on or about the Premises; or

(c) If RAILWAY, in the good faith judgment of its Superintendent, shall require a change in the location or elevation of its railroad on or about the location of the Facilities or the Premises that might effectively prohibit the use or operation of the Facilities; or
(d) If RAILWAY, in the good faith judgment of its Superintendent, determines that the maintenance or use of the Facilities unduly interferes with the operation and maintenance of the facilities of RAILWAY, or with the present or future use of such property by RAILWAY, its lessees, affiliates, successors or assigns, for their respective purposes.

16. Condemnation. If the Premises or any portion thereof shall be taken or condemned in whole or in part for public purposes, or sold in lieu of condemnation, then this Agreement and the rights granted to LICENSEE hereunder, at the sole option of RAILWAY, forthwith cease and terminate. All compensation awarded for any taking (or sale proceeds in lieu thereof) shall be the property of RAILWAY, and LICENSEE shall have no claim thereto, the same being hereby expressly waived by LICENSEE.

17. Removal of Facilities; Survival. The Facilities are and shall remain the personal property of LICENSEE. Upon the termination of this Agreement, LICENSEE shall remove the Facilities from the Premises within thirty (30) days after the effective date thereof. In performing such removal, unless otherwise directed by RAILWAY, LICENSEE shall restore the Premises to the same condition as existed prior to the installation or placement of Facilities, reasonable wear and tear excepted. In the event LICENSEE shall fail to so remove the Facilities or restore the Premises, the Facilities shall be deemed to have been abandoned by LICENSEE, and the same shall become the property of RAILWAY for RAILWAY to use, remove, destroy or otherwise dispose of at its discretion and without responsibility for accounting to LICENSEE therefor; provided, however, in the event RAILWAY elects to remove the Facilities, RAILWAY, in addition to any other legal remedy it may have, shall have the right to recover from LICENSEE all costs incurred in connection with such removal and the restoration of the Premises. Notwithstanding anything to the contrary contained in this Agreement, the termination of this Agreement shall not relieve LICENSEE from LICENSEE's obligations accruing prior to the termination date, and such obligations shall survive any such termination of this Agreement.

18. Interests in Real Property

LICENSEE shall acquire or settle all property, property rights and all damages to property affected by the installation, construction, maintenance, and operation of the Facilities. The cost of said property, property rights and damages to property shall be borne by LICENSEE.

RAILWAY, insofar as it has the legal right so to do, shall permit LICENSEE to enter upon lands owned or operated by RAILWAY to construct and occupy its property with sufficient width to permit construction and maintenance of the Facilities. LICENSEE and RAILWAY shall enter into good faith negotiations for a price to be consistent with the property interest determined by LICENSEE to be needed for the proposed improvement.

However, the price to be paid by LICENSEE to RAILWAY for said conveyances (representing the fair market value thereof plus damages, if any, to the residue) shall be as mutually agreed upon within nine (9) months from the date of occupancy by LICENSEE, and if agreement as to price is reached, an additional period of ninety (90) days shall be allowed for settlement, it being agreed however, that if no agreement as to price is reached within the aforesaid nine (9) month period, LICENSEE will within ninety (90) days thereafter institute an eminent domain proceeding authorized by law for the determination of the value of same. The provisions of this Agreement shall survive the institution of such eminent domain proceeding.

LICENSEE shall furnish the plans and descriptions for any such conveyance. It is understood, however, that the foregoing right of entry is a permissive use only, and this Section is not intended to convey or obligate RAILWAY to convey any interest in its land.

II. SCOPE OF RAILROAD PROJECT, AND MAINTENANCE AND OWNERSHIP OF PROJECT IMPROVEMENTS
1. **Scope of Work.** The scope of the work by RAILWAY shall include any necessary acquisition of right-of-way, permitting, design, construction, and construction-related activities including, but not limited to, inspection, flagging, and superintendence, within and along RAILWAY property necessary to facilitate LICENSEE’s installation, construction, maintenance, operation and removal of the Facilities (“Railroad Project”).

2. **Construction of the Railroad Project.** The RAILWAY shall construct the Railroad Project in accordance with the force account estimate, attached as Exhibit C and herein incorporated by reference, including any future amendments thereto, and all applicable state and federal laws.

   (a) All work performed by the RAILWAY related to the Railroad Project and consistent with the force account estimate will be deemed reimbursable project expenses, and shall be at no cost to the RAILWAY.

   (b) RAILWAY shall accomplish work on the Railroad Project by the following: (i) railroad force account; (ii) existing continuing contracts at reasonable costs; (iii) contracting with the lowest responsible bidder based on appropriate solicitation; or (iv) contract without competitive bidding for minor work at reasonable costs.

3. **Maintenance and Ownership of the Railroad Project.** Upon completion of the Railroad Project, the RAILWAY shall own and, at its own cost and expense, maintain the Railroad Project improvements until such time as RAILWAY deems such maintenance to no longer be necessary.

4. **Construction of the Railroad Project.** Execution of this Agreement constitutes LICENSEE’s issuance of a notice to proceed to RAILWAY with the Railroad Project (“Notice to Proceed”). RAILWAY shall make commercially reasonable efforts to commence construction on the Railroad Project as soon as possible, in RAILWAY’s sole discretion, after the date of availability for RAILWAY to commence its construction activities on the Railroad Project.

5. **Reimbursement by LICENSEE.**

   (a) RAILWAY shall furnish, or cause to be furnished, at the expense of the LICENSEE all the labor costs, overhead and indirect construction costs, materials and supplies, contracted services, transportation, equipment, and other related costs and items required to perform and complete the Railroad Project. In addition, RAILWAY shall furnish, at the expense of LICENSEE, the protection of rail traffic occasioned by or made necessary by entry by LICENSEE and/or its contractors or any subcontractor(s) pursuant to this Agreement.

   (b) Except as otherwise provided in this Agreement, LICENSEE shall reimburse the RAILWAY for the actual cost of the work performed by it, which is estimated to be **Two Hundred and Seven Thousand, Three Hundred and Thirty-Six Dollars and Zero Cents ($207,336.00)**. It is agreed that progress payments will be made by LICENSEE to the RAILWAY for the total amount of work done as shown on monthly statements. LICENSEE shall pay each RAILWAY statement within forty-five (45) days of receipt. Upon receipt of the final bill, RAILWAY shall be reimbursed in such amounts as are proper and eligible for final payment, and the Railroad Project shall be submitted to LICENSEE for final audit.

   (c) Incurred Costs. The reimbursement amounts for all costs billed under this Agreement shall be subject to the applicable Federal principles and based on the full actual costs plus Approved Labor Additives. Design costs incurred by RAILWAY prior to issuance of the Notice to Proceed shall be reimbursed by LICENSEE.

III. **GENERAL PROVISIONS**
1. **Assignment and Successors.** This Agreement shall be binding upon and shall inure to the benefit of, and shall be enforceable by, the parties hereto and their respective permitted successors and assigns.

2. **Limitations Upon Damages.** Notwithstanding any other provision of this Agreement, RAILWAY shall not be liable for breach of this Agreement or under this Agreement for any consequential, incidental, exemplary, punitive, special, business damages or lost profits, as well as any claims for death, personal injury, and property loss and damage which occurs by reason of, or arises out of, or is incidental to the interruption in or usage of the Facilities placed upon or about the Premises by LICENSEE, including without limitation any damages under such claims that might be considered consequential, incidental, exemplary, punitive, special, business damages or loss profits.

3. **Miscellaneous.** All exhibits, attachments, riders and addenda referred to in this Agreement are incorporated into this Agreement and made a part hereof for all intents and purposes. Time is of the essence with regard to each provision of this Agreement. This Agreement shall be construed and interpreted in accordance with and governed by the laws of the State in which the Premises are located. Each covenant of RAILWAY and LICENSEE under this Agreement is independent of each other covenant under this Agreement. No default in performance of any covenant by a party shall excuse the other party from the performance of any other covenant.

4. **Notice to Parties.** Whenever any notice, statement or other communication is required under this Agreement, it shall be sent to the contact below except as otherwise provided in this Agreement or unless otherwise specifically advised.

   As to LICENSEE:
   c/o City of Middletown
   One Donham Plaza
   Middletown, Ohio 45042-1932
   Attention: City Engineer

   As to RAILWAY:
   c/o Norfolk Southern Corporation
   1200 Peachtree Street, N.E.
   Atlanta, Georgia 30309-3504
   Attention: Public Projects Engineer

   Either party may, by notice in writing, direct that future notices or demands be sent to a different address. All notices hereunder shall be deemed given upon receipt (or, if rejected, upon rejection).

5. **Severability.** The invalidity of any section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining sections, subsections, clauses or provisions of this contract.

6. **No Third Party Beneficiary.** This Agreement shall be for the benefit of the parties only, and no person, firm or corporation shall acquire any rights whatsoever by virtue of this Agreement, except LICENSEE and the RAILWAY and their successors and assigns.

7. **Force Majeure.** The parties agree to pursue the completion of the Railroad Project in accordance with the requirements of this Agreement. No party shall be held responsible to the other for delays caused by Force Majeure events, and such delays shall not be deemed a breach or default under this Agreement. In no event shall Force Majeure events excuse LICENSEE from its obligation to make payment to RAILWAY in accordance with this Agreement. Further the parties agree that the resolution or settlement of strikes or other labor disputes shall not be deemed to be within the control or reasonable control of the affected party. If any party is unable to complete work assigned to it due to a condition of Force Majeure or other conditions beyond the reasonable control of said party, then said party will diligently pursue completion of the item that is delayed once said condition or conditions are no longer in effect. For purposes of this Agreement, Force Majeure events are defined as circumstances beyond a party’s reasonable control that delay performance and may include, but are not limited to, acts of God, actions or decrees of
governmental bodies (beyond control of the parties), acts of the public enemy, labor disputes, fires, insurrections, and floods.

8. Amendment; Entire Agreement. This Agreement may be amended only in writing executed by authorized representatives of the parties hereto. No verbal change, modification, or amendment shall be effective unless in writing and signed by authorized representatives of the parties. The provisions hereof constitute the entire Agreement between the parties and supersede any verbal statement, representations, or warranties, stated or implied.

9. Waiver of Workers Compensation Immunity. In the event that all or a portion of the Premises is located in the State of Ohio, LICENSEE, with respect to the indemnification provisions contained in this Agreement, hereby expressly waives any defense or immunity granted or afforded LICENSEE pursuant to Section 35, Article II of the Ohio Constitution and Section 4123.74 of the Ohio Revised Code. In the event that all or a portion of the Premises is located in the Commonwealth of Pennsylvania, LICENSEE, with respect to the indemnification provisions contained in this Agreement, hereby expressly waives any defense or immunity granted or afforded LICENSEE pursuant to Pennsylvania Workers’ Compensation Act, 77 P.S. 481.

10. Independent Contractors. The parties agree that LICENSEE and its agents and/or contractors, shall not be deemed either agents or independent contractors of RAILWAY. Except as otherwise provided by this Agreement, RAILWAY shall exercise no control whatsoever over the employment, discharge, compensation of, or services rendered by LICENSEE or its contractors. Notwithstanding the foregoing, this paragraph shall in no way affect the absolute authority of RAILWAY to temporarily prohibit LICENSEE, its agents and/or contractors, or persons not associated with LICENSEE from entering RAILWAY property, or to require the removal of any person from RAILWAY property, if RAILWAY determines, in its sole discretion, that such person is not acting in a safe manner or that actual or potential hazards in, on, or about the Railroad Project Work exist.

11. Meaning of "Railway". The word "RAILWAY" as used herein shall include any other company whose property at the aforesaid location may be leased or operated by RAILWAY. Said term also shall include RAILWAY's officers, directors, agents and employees, and any parent company, subsidiary or affiliate of RAILWAY and their respective officers, directors, agents and employees.

12. Approval of Plans. By its review and approval, if any, of the plans, RAILWAY signifies only that the plans and improvements to be constructed in accordance with the plans satisfy the RAILWAY’s requirements. RAILWAY expressly disclaims all other representations and warranties in connection with said plans, including, but not limited to, the integrity, suitability or fitness for the purposes of the LICENSEE or any other person(s) of the plans or improvements constructed in accordance with the plans.

IN WITNESS WHEREOF, the parties have, through duly authorized representatives, entered into this Agreement effective the day and year first written above.

CITY OF MIDDLETOWN, an Ohio Municipality

By: _______________________________
Name: _____________________________
Title: ______________________________
Date: ______________________________
NS File: BR0029706

NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation

By: _______________________________
Name: _____________________________
Title: ______________________________
Date: ______________________________
UNIVERSITY BLVD.
BRIDGE
BUT-MO366-00990
CITY OF MIDDLETOWN
BUTLER COUNTY

INDEX OF SHEETS:

- TITLE SHEET: 1
- TYPICAL SECTIONS: 2 - 4
- GENERAL NOTES: 5
- WOT GENERAL NOTES: 6 - 7
- WOT TYPICAL SECTIONS: 8 - 9
- WOT PLANS: 10 - 34
- GENERAL SUMMARY: 35
- SUB-SUMMARIES: 36
- ROADWAY PLAN: 57
- BRIDGE PLANS: 38 - 71
- CITY STANDARD DRAWING: 57-2

2019 SPECIFICATIONS

THE STANDARD SPECIFICATIONS OF THE STATE OF OHIO, DEPARTMENT OF TRANSPORTATION, INCLUDING CHANGES AND SUPPLEMENTAL SPECIFICATIONS LISTED IN THE PROPOSAL SHALL GOVERN THIS IMPROVEMENT.

I HEREBY APPROVE THESE PLANS AND DECLARE THAT THE MAKING OF THIS IMPROVEMENT WILL NOT REQUIRE THE CLOSING TO TRAFFIC OF THE HIGHWAY AND THAT PROVISIONS FOR THE MAINTENANCE AND SAFETY OF TRAFFIC WILL BE AS SET FORTH ON THE PLANS AND ESTIMATES.

APPROVED:

DATE: __________ CITY ENGINEER, CITY OF MIDDLETOWN
Special Provisions for Protection of Railway Interests

1. AUTHORITY OF RAILROAD ENGINEER AND SPONSOR ENGINEER:

Norfolk Southern Railway Company, hereinafter referred to as “Railroad”, and their authorized representative shall have final authority in all matters affecting the safe maintenance of railroad traffic including the adequacy of the foundations and structures supporting the railroad tracks. For Public Projects impacting the Railroad, the Railroad’s Public Projects Engineer, hereinafter referred to as “Railroad Engineer”, will serve as the authorized representative of the Railroad.

The authorized representative of the Project Sponsor (“Sponsor”), hereinafter referred to as the “Sponsor’s Engineer”, shall have authority over all other matters as prescribed herein and in the Project Specifications.

The Sponsor’s Prime Contractor, hereinafter referred to as “Contractor” shall be responsible for completing any and all work in accordance with the terms prescribed herein and in the Project Specifications. These terms and conditions are subject to change without notice, from time to time in the sole discretion of the Railroad. Contractor must request from Railroad and follow the latest version of these provisions prior to commencing work.

2. NOTICE OF STARTING WORK:

A. The Contractor shall not commence any work on railroad rights-of-way until he has complied with the following conditions:

1. Signed and received a fully executed copy of the required Norfolk Southern Contractor Right of Entry Agreement.

2. Given the Railroad written notice in electronic format to the Railroad Engineer, with copy to the Sponsor’s Engineer who has been designated to be in charge of the work, at least ten days in advance of the date he proposes to begin work on Railroad rights-of-way.

3. Obtained written approval from the Railroad of Railroad Protective Liability Insurance coverage as required by paragraph 14 herein. It should be noted that the Railroad does not accept notation of Railroad Protective insurance on a certificate of liability insurance form or Binders as Railroad must have the full original countersigned policy. Further, please note that mere receipt of the policy is not the only issue but review for compliance. Due to the number of projects system-wide, it typically takes a minimum of 30-45 days for the Railroad to review.

4. Obtained Railroad’s Flagging Services as required by paragraph 7 herein.

5. Obtained written authorization from the Railroad to begin work on Railroad’s rights-of-way, such authorization to include an outline of specific conditions with which he must comply.

6. Furnished a schedule for all work within the Railroad’s rights-of-way as required by paragraph 7.B.1.

B. The Railroad’s written authorization to proceed with the work shall include the names, addresses, and telephone numbers of the Railroad’s representatives who are to be
3. INTERFERENCE WITH RAILROAD OPERATIONS:

A. The Contractor shall so arrange and conduct his work that there will be no interference with Railroad’s operations, including train, signal, telephone and telegraphic services, or damage to the property of the Railroad or to poles, wires, and other facilities of tenants on the rights-of-way of the Railroad. Whenever work is liable to affect the operations or safety of trains, the method of doing such work shall first be submitted to the Railroad Engineer for approval, but such approval shall not relieve the Contractor from liability. Any work to be performed by the Contractor which requires flagging service or inspection service shall be deferred by the Contractor until the flagging service or inspection service required by the Railroad is available at the job site.

B. Whenever work within Railroad’s rights-of-way is of such a nature that impediment to Railroad’s operations such as use of runaround tracks or necessity for reduced speed is unavoidable, the Contractor shall schedule and conduct his operations so that such impediment is reduced to the absolute minimum.

C. Should conditions arising from, or in connection with the work, require that immediate and unusual provisions be made to protect operations and property of the Railroad, the Contractor shall make such provisions. If in the judgment of the Railroad Engineer, or in his absence, the Railroad’s Division Engineer, such provisions is insufficient, either may require or provide such provisions as he deems necessary. In any event, such unusual provisions shall be at the Contractor’s expense and without cost to the Railroad or the Sponsor.

D. “One Call” Services do not locate buried Railroad utilities. The contractor shall contact the Railroad’s representative 2 days in advance of work at those places where excavation, pile driving, or heavy loads may damage the Railroad’s underground facilities. Upon request from the Contractor or Sponsor, Railroad forces will locate and paint mark or flag the Railroad’s underground facilities. The Contractor shall avoid excavation or other disturbances of these facilities. If disturbance or excavation is required near a buried Railroad facility, the contractor shall coordinate with the Railroad to have the facility potholed manually with careful hand excavation. The facility shall be protected by the Contractor during the course of the disturbance under the supervision and direction of the Railroad’s representative.

4. TRACK CLEARANCES:

A. The minimum track clearances to be maintained by the Contractor during construction are shown on the Project Plans. If temporary clearances are not shown on the project plans, the following criteria shall govern the use of falsework and formwork above or adjacent to operated tracks.

1. A minimum vertical clearance of 22‘-0” above top of highest rail shall be maintained at all times.

2. A minimum horizontal clearance of 13‘-0” from centerline of tangent track or 14‘-0” from centerline of curved track shall be maintained at all times. Additional horizontal clearance may be required in special cases to be safe for operating conditions. This additional clearance will be as determined by the Railroad Engineer.
Special Provisions for Protection of Railway Interests
August 28, 2017

EXHIBIT B

3. All proposed temporary clearances which are less than those listed above must be submitted to Railroad Engineer for approval prior to construction and must also be authorized by the regulatory body of the State if less than the legally prescribed clearances.

4. The temporary clearance requirements noted above shall also apply to all other physical obstructions including, but not limited to: stockpiled materials, parked equipment, placement or driving of piles, and bracing or other construction supports.

B. Before undertaking any work within Railroad right-of-way, and before placing any obstruction over any track, the Contractor shall:

1. Notify the Railroad’s representative at least 72 hours in advance of the work.

2. Receive assurance from the Railroad’s representative that arrangements have been made for flagging service as may be necessary.

3. Receive permission from the Railroad’s representative to proceed with the work.

4. Ascertain that the Sponsor’s Engineer has received copies of notice to the Railroad and of the Railroad’s response thereto.

5. CONSTRUCTION PROCEDURES:

A. General:

1. Construction work and operations by the Contractor on Railroad property shall be:

   a. Subject to the inspection and approval of the Railroad Engineer or their designated Construction Engineering Representative.

   b. In accordance with the Railroad’s written outline of specific conditions.

   c. In accordance with the Railroad’s general rules, regulations and requirements including those relating to safety, fall protection and personal protective equipment.

   d. In accordance with these Special Provisions.

2. Submittal Requirements

   a. The Contractor shall submit all construction related correspondence and submittals electronically to the Railroad Engineer.

   b. The Contractor shall allow for 30 days for the Railroad’s review and response.

   c. All work in the vicinity of the Railroad’s property that has the potential to affect the Railroad’s train operations or disturb the Railroad’s Property must be submitted and approved by the Railroad prior to work being performed.

   d. All submittals and calculations must be signed and sealed by a registered engineer licensed in the state of the project work.
e. All submittals shall first be approved by the Sponsor’s Engineer and the Railroad Engineer, but such approval shall not relieve the Contractor from liability.

f. For all construction projects, the following submittals, but not limited to those listed below, shall be provided for review and approval when applicable:

   1. General Means and Methods
   2. Ballast Protection
   3. Construction Excavation & Shoring
   4. Pipe, Culvert, & Tunnel Installations
   5. Demolition Procedure
   6. Erection & Hoisting Procedure
   7. Debris Shielding or Containment
   8. Blasting
   9. Formwork for the bridge deck, diaphragms, overhang brackets, and protective platforms
   10. Bent Cap Falsework. A lift plan will be required if the contractor want to move the falsework over the tracks.

g. For Undergrade Bridges (Bridges carrying the Railroad) the following submittals in addition to those listed above shall be provided for review and approval:

   1. Shop Drawings
   2. Bearing Shop Drawings and Material Certifications
   3. Concrete Mix Design
   4. Structural Steel, Rebar, and/or Strand Certifications
   5. 28 day Cylinder Test for Concrete Strength
   6. Waterproofing Material Certification
   7. Test Reports for Fracture Critical Members
   8. Foundation Construction Reports

   Fabrication may not begin until the Railroad has approved the required shop drawings.

h. The Contractor shall include in all submissions a detailed narrative indicating the progression of work with the anticipated timeframe to complete each task. Work will not be permitted to commence until the Contractor has provided the Railroad with a satisfactory plan that the project will be undertaken without scheduling, performance or safety related issues. Submission shall also provide a listing of the anticipated equipment to be used, the location of all equipment to be used and insure a contingency plan of action is in place should a primary piece of equipment malfunction.

B. Ballast Protection

   1. The Contractor shall submit the proposed ballast protection system detailing the specific filter fabric and anchorage system to be used during all construction activities.
2. The ballast protection is to extend 25’ beyond the proposed limit of work, be installed at the start of the project and be continuously maintained to prevent all contaminants from entering the ballast section of all tracks for the entire duration of the project.

C. Excavation:

1. The subgrade of an operated track shall be maintained with edge of berm at least 10’-0” from centerline of track and not more than 24-inches below top of rail. Contractor will not be required to make existing section meet this specification if substandard, in which case existing section will be maintained.

2. Additionally, the Railroad will require the installation of an OSHA approved handrail and orange construction safety fencing for all excavations of the Railroad right-of-way.

D. Excavation for Structures and Shoring Protection:

1. The Contractor will be required to take special precaution and care in connection with excavating and shoring pits, and in driving piles or sheeting for footings adjacent to tracks to provide adequate lateral support for the tracks and the loads which they carry, without disturbance of track alignment and surface, and to avoid obstructing track clearances with working equipment, tools or other material.

2. All plans and calculations for shoring shall be prepared, signed, and sealed by a Registered Professional Engineer licensed in the state of the proposed project, in accordance with Norfolk Southern’s Overhead Grade Separation Design Criteria, subsection H.1.6.E-Construction Excavation (Refer to Norfolk Southern Public Projects Manual Appendix H). The Registered Professional Engineer will be responsible for the accuracy for all controlling dimensions as well as the selection of soil design values which will accurately reflect the actual field conditions.

3. The Contractor shall provide a detailed installation and removal plan of the shoring components. Any component that will be installed via the use of a crane or any other lifting device shall be subject to the guidelines outlined in section 5.G of these provisions.

4. The Contractor shall be required to survey the track(s) and Railroad embankment and provide a cross section of the proposed excavation in relation to the tracks.

5. Calculations for the proposed shoring should include deflection calculations. The maximum deflection for excavations within 18’-0” of the centerline of the nearest track shall be 3/8”. For all other cases, the max deflection shall not exceed ½”.

6. Additionally, the Railroad will require the installation of an OSHA approved handrail and orange construction safety fencing for all excavations of the Railroad right-of-way.

7. The front face of shoring located to the closest NS track for all shoring set-ups located in Zone 2 as shown on NS Typical Drawing No. 4 – Shoring Requirements (Appendix I) shall remain in place and be cut off 2’-0” below the final ground elevation. The remaining shoring in Zone 2 and all shoring in Zone 1 may be removed and all voids must be backfilled with flowable fill.

E. Pipe, Culvert, & Tunnel Installations
1. **Pipe, Culvert, & Tunnel Installations** shall be in accordance with the appropriate Norfolk Southern Design Specification as noted below:

   
   b. For Jack and Bore Method refer to Norfolk Southern Public Projects Manual Appendix H.4.7.
   

2. The installation methods provided are for pipes carrying storm water or open flow runoff. All other closed pipeline systems shall be installed in accordance Norfolk Southern’s Pipe and Wire Program and the NSCE-8

**F. Demolition Procedures**

1. **General**

   a. Demolition plans are required for all spans over the track(s), for all spans adjacent to the track(s), if located on (or partially on) Railroad right-of-way; and in all situations where cranes will be situated on, over, or adjacent to Railroad right-of-way and within a distance of the boom length plus 15'-0” from the centerline of track.

   b. Railroad tracks and other Railroad property must be protected from damage during the procedure.

   c. A pre-demolition meeting shall be conducted with the Sponsor, the Railroad Engineer or their representative, and the key Contractor’s personnel prior to the start of the demolition procedure.

   d. The Railroad Engineer or his designated representative must be present at the site during the entire demolition procedure period.

   e. Existing, obsolete, bridge piers shall be removed to a sufficient depth below grade to enable restoration of the existing/proposed track ditch, but in no case less than 2'-0” below final grade.

2. **Submittal Requirements**

   a. In addition to the submittal requirements outlined in Section 5.A.2 of these provisions, the Contractor shall submit the following for approval by the Railroad Engineer:

      (1) A plan showing the location of cranes, horizontally and vertically, operating radii, with delivery or disposal locations shown. The location of all tracks and other Railroad facilities as well as all obstructions such as wire lines, poles, adjacent structures, etc. must also be shown.
(2) Rating sheets showing cranes or lifting devices to be adequate for 150% of the actual weight of the pick, including all rigging components. A complete set of crane charts, including crane, counterweight, and boom nomenclature is to be submitted. Safety factors that may have been “built-in” to the crane charts are not to be considered when determining the 150% factor of safety.

(3) Plans and computations showing the weight of the pick must be submitted. Calculations shall be made from plans of the existing structure showing complete and sufficient details with supporting data for the demolition the structure. If plans do not exist, lifting weights must be calculated from field measurements. The field measurements are to be made under the supervision of the Registered Professional Engineer submitting the procedure and calculations.

(4) The Contractor shall provide a sketch of all rigging components from the crane’s hook block to the beam. Catalog cuts or information sheets of all rigging components with their lifting capacities shall be provided. All rigging must be adequate for 150% of the actual weight of the pick. Safety factors that may have been “built-in” to the rating charts are not to be considered when determining the 150% factor of safety. All rigging components shall be clearly identified and tagged with their rated lifting capacities. The position of the rigging in the field shall not differ from what is shown on the final plan without prior review from the Sponsor and the Railroad.

(5) A complete demolition procedure, including the order of lifts, time required for each lift, and any repositioning or re-hitching of the crane or cranes.

(6) Design and supporting calculations for the temporary support of components, including but not limited to the stability of the superstructure during the temporary condition, temporary girder tie-downs and falsework.

3. Overhead Demolition Debris Shield
   
a. The demolition debris shield shall be installed prior to the demolition of the bridge deck or other relevant portions of the superstructure over the track area to catch all falling debris.

b. The demolition debris shield shall provide a minimum vertical clearance as specified in Section 4.A.1 of these provisions or maintain the existing vertical clearance if the existing clearance is less than that specified in Section 4.A.1.

c. The Contractor shall include the demolition debris shield installation/removal means and methods as part of the proposed Demolition procedure submission.

d. The Contractor shall submit the demolition debris shield design and supporting calculations for approval by the Railroad Engineer.
e. The demolition debris shield shall have a minimum design load of 50 pounds per square foot plus the weight of the equipment, debris, personnel, and other loads to be carried.

f. The Contractor shall include the proposed bridge deck removal procedure in its demolition means and methods and shall verify that the size and quantity of the demolition debris generated by the procedure does not exceed the shield design loads.

g. The Contractor shall clean the demolition debris shield daily or more frequently as dictated either by the approved design parameters or as directed by the Railroad Engineer.

4. Vertical Demolition Debris Shield

a. A vertical demolition debris shield may be required for substructure removals in close proximity to the Railroad’s track and other facilities, as determined by the Railroad Engineer.

G. Erection & Hoisting Procedures

1. General

a. Erection plans are required for all spans over the track(s), for all spans adjacent to the track(s), if located on (or partially on) Railroad right-of-way; and in all situations where cranes will be situated on, over, or adjacent to Railroad right-of-way and within a distance of the boom length plus 15'-0” from the centerline of track.

b. Railroad tracks and other Railroad property must be protected from damage during the erection procedure.

c. A pre-erection meeting shall be conducted with the Sponsor, the Railroad Engineer or their representative, and the key Contractor’s personnel prior to the start of the erection procedure.

d. The Railroad Engineer or his designated representative must be present at the site during the entire erection procedure period.

e. For field splices located over Railroad property, a minimum of 50% of the holes for each connection shall be filled with bolts or pins prior to releasing the crane. A minimum of 50% of the holes filled shall be filled with bolts. All bolts must be appropriately tightened. Any changes to previously approved field splice locations must be submitted to the Railroad for review and approval. Refer to Norfolk Southern’s Overhead Grade Separation Design Criteria for additional splice details (Norfolk Southern Public Projects Manual Appendix H.1, Section 4.A.3.).
2. Submittal Requirements

a. In addition the submittal requirements outlined in Section 5.A.2 of these provisions, the Contractor shall submit the following for approval by the Railroad Engineer:

(1) As-built beam seat elevations - All as-built bridge seats and top of rail elevations shall be furnished to the Railroad Engineer for review and verification at least 30 days in advance of the erection, to ensure that minimum vertical clearances as approved in the plans will be achieved.

(2) A plan showing the location of cranes, horizontally and vertically, operating radii, with delivery or staging locations shown. The location of all tracks and other Railroad facilities as well as all obstructions such as wire lines, poles, adjacent structures, etc. must also be shown.

(3) Rating sheets showing cranes or lifting devices to be adequate for 150% of the actual weight of the pick, including all rigging components. A complete set of crane charts, including crane, counterweight, and boom nomenclature is to be submitted. Safety factors that may have been “built-in” to the crane charts are not to be considered when determining the 150% factor of safety.

(4) Plans and computations showing the weight of the pick must be submitted. Calculations shall be made from plans of the proposed structure showing complete and sufficient details with supporting data for the erection of the structure. If plans do not exist, lifting weights must be calculated from field measurements. The field measurements are to be made under the supervision of the Registered Professional Engineer submitting the procedure and calculations.

(5) The Contractor shall provide a sketch of all rigging components from the crane’s hook block to the beam. Catalog cuts or information sheets of all rigging components with their lifting capacities shall be provided. All rigging must be adequate for 150% of the actual weight of the pick. Safety factors that may have been “built-in” to the rating charts are not to be considered when determining the 150% factor of safety. All rigging components shall be clearly identified and tagged with their rated lifting capacities. The position of the rigging in the field shall not differ from what is shown on the final plan without prior review from the Sponsor and the Railroad.

(6) A complete erection procedure, including the order of lifts, time required for each lift, and any repositioning or re-hitching of the crane or cranes.

(7) Design and supporting calculations for the temporary support of components, including but not limited to temporary girder tie-downs and falsework.
EXHIBIT B

H. Blasting:

1. The Contractor shall obtain advance approval of the Railroad Engineer and the Sponsor Engineer for use of explosives on or adjacent to Railroad property. The request for permission to use explosives shall include a detailed blasting plan. If permission for use of explosives is granted, the Contractor will be required to comply with the following:

   a. Blasting shall be done with light charges under the direct supervision of a responsible officer or employee of the Contractor and a licensed blaster.

   b. Electric detonating fuses shall not be used because of the possibility of premature explosions resulting from operation of two-way radios.

   c. No blasting shall be done without the presence of the Railroad Engineer or his authorized representative. At least 72 hours advance notice to the person designated in the Railroad’s notice of authorization to proceed (see paragraph 2.B) will be required to arrange for the presence of an authorized Railroad representative and such flagging as the Railroad may require.

   d. Have at the job site adequate equipment, labor and materials and allow sufficient time to clean up debris resulting from the blasting without delay to trains, as well as correcting at his expense any track misalignment or other damage to Railroad property resulting from the blasting as directed by the Railway’s authorized representative. If his actions result in delay of trains, the Contractor shall bear the entire cost thereof.

   e. The blasting Contractor shall have a copy of the approved blasting plan on hand while on the site.

   f. Explosive materials or loaded holes shall not be left unattended at the blast site.

   g. A seismograph shall be placed on the track shoulder adjacent to each blast which will govern the peak particle velocity of two inches per second. Measurement shall also be taken on the ground adjacent to structures as designated by a qualified and independent blasting consultant. The Railroad reserves the option to direct the placement of additional seismographs at structures or other locations of concern, without regard to scaled distance.

   h. After each blast, the blasting Contractor shall provide a copy of their drill log and blast report, which includes number of holes, depth of holes, number of decks, type and pounds of explosives used per deck.

   i. The Railroad may require top of rail elevations and track centers taken before, during and after the blasting and excavation operation to check for any track misalignment resulting from the Contractor’s activities.
2. The Railroad representative will:
   a. Determine approximate location of trains and advise the Contractor the appropriate amount of time available for the blasting operation and clean up.
   b. Have the authority to order discontinuance of blasting if, in his opinion, blasting is too hazardous or is not in accord with these special provisions.

3. The Contractor must hire, at no expense to the Railroad, a qualified and independent blasting consultant to oversee the use of explosives. The blasting consultant will:
   a. Review the Contractor’s proposed drilling and loading patterns, and with the blasting consultant’s personnel and instruments, monitor the blasting operations.
   b. Confirm that the minimum amounts of explosives are used to remove the rock.
   c. Be empowered to intercede if he concludes that the Contractor’s blasting operations are endangering the Railway.
   d. Submit a letter acknowledging that he has been engaged to oversee the entire blasting operation and that he approves of the blasting plan.
   e. Furnish copies of all vibration readings to the Railroad representative immediately after each blast. The representative will sign and date the seismograph tapes after each shot to verify the readings are for that specific shot.
   f. Advise the Railroad representative as to the safety of the operation and notify him of any modifications to the blasting operation as the work progresses.

4. The request for permission to use explosives on the Railroad’s Right-of-Way shall include a blasting proposal providing the following details:
   a. A drawing which shows the proposed blasting area, location of nearest hole and distance to Railway structures, all with reference to the centerline of track.
   b. Hole diameter.
   c. Hole spacing and pattern.
   d. Maximum depth of hole.
   e. Maximum number of decks per hole.
   f. Maximum pounds of explosives per hole.
   g. Maximum pounds of explosives per delay.
   h. Maximum number of holes per detonation.
i. Type of detonator and explosives to be used. (Electronic detonating devices will not be permitted). Diameter of explosives if different from hole diameter.

j. Approximate dates and time of day when the explosives are to be detonated.

k. Type of flyrock protection.

l. Type and patterns of audible warning and all clear signals to be used before and after each blast.

m. A copy of the blasting license and qualifications of the person directly in charge of the blasting operation, including their name, address and telephone number.

n. A copy of the Authority's permit granting permission to blast on the site.

o. A letter from the blasting consultant acknowledging that he has been engaged to oversee the entire blasting operation and that he approves of the blasting plan.

p. In addition to the insurance requirements outlined in Paragraph 14 of these Provisions, A certificate of insurance from the Contractor’s insurer stating the amount of coverage for XCU (Explosive Collapse and Underground Hazard) insurance and that XCU Insurance is in force for this project.

q. A copy of the borings and Geotechnical information or report.

I. Track Monitoring

1. At the direction of the Railroad Engineer, any activity that has the potential to disturb the Railroad track structure may require the Contractor to submit a detailed track monitoring program for approval by the Railroad Engineer.

2. The program shall specify the survey locations, the distance between the location points, and frequency of monitoring before, during, and after construction. Railroad reserves the right to modify the survey locations and monitoring frequency as necessary during the project.

3. The survey data shall be collected in accordance with the approved frequency and immediately furnished to the Railroad Engineer for analysis.

4. If any movement has occurred as determined by the Railroad Engineer, the Railroad will be immediately notified. Railroad, at its sole discretion, shall have the right to immediately require all Contractor operations to be ceased and determine what corrective action is required. Any corrective action required by the Railroad or performed by the Railroad including the monitoring of corrective action of the Contractor will be at project expense.

J. Maintenance of Railroad Facilities:

1. The Contractor will be required to maintain all ditches and drainage structures free of silt or other obstructions which may result from his operations and provide and maintain any erosion control measures as required. The Contractor will promptly
Special Provisions for Protection of Railway Interests

August 28, 2017

repair eroded areas within Railroad rights-of-way and repair any other damage to the property of the Railroad or its tenants.

2. If, in the course of construction, it may be necessary to block a ditch, pipe or other drainage facility, temporary pipes, ditches or other drainage facilities shall be installed to maintain adequate drainage, as approved by the Railroad Engineer. Upon completion of the work, the temporary facilities shall be removed and the permanent facilities restored.

3. All such maintenance and repair of damages due to the Contractor’s operations shall be done at the Contractor’s expense.

K. Storage of Materials and Equipment:

1. Materials and equipment shall not be stored where they will interfere with Railroad operations, nor on the rights-of-way of the Railroad without first having obtained permission from the Railroad Engineer, and such permission will be with the understanding that the Railroad will not be liable for damage to such material and equipment from any cause and that the Railroad Engineer may move or require the Contractor to move, at the Contractor’s expense, such material and equipment.

2. All grading or construction machinery that is left parked near the track unattended by a watchman shall be effectively immobilized so that it cannot be moved by unauthorized persons. The Contractor shall protect, defend, indemnify and save Railroad, and any associated, controlled or affiliated corporation, harmless from and against all losses, costs, expenses, claim or liability for loss or damage to property or the loss of life or personal injury, arising out of or incident to the Contractor’s failure to immobilize grading or construction machinery.

L. Cleanup:

1. Upon completion of the work, the Contractor shall remove from within the limits of the Railroad rights-of-way, all machinery, equipment, surplus materials, falsework, rubbish or temporary buildings of the Contractor, and leave said rights-of-way in a neat condition satisfactory to the Railroad Engineer or his authorized representative.

6. DAMAGES:

A. The Contractor shall assume all liability for any and all damages to his work, employees, servants, equipment and materials caused by Railroad traffic.

B. Any cost incurred by the Railroad for repairing damages to its property or to property of its tenants, caused by or resulting from the operations of the Contractor, shall be paid directly to the Railroad by the Contractor.

7. FLAGGING SERVICES:

A. Requirements:

1. Flagging services will not be provided until the Contractor’s insurance has been reviewed & approved by the Railroad.
2. Under the terms of the agreement between the Sponsor and the Railroad, the Railroad has sole authority to determine the need for flagging required to protect its operations. In general, the requirements of such services will be whenever the Contractor’s personnel or equipment are or are likely to be, working on the Railroad’s right-of-way, or across, over, adjacent to, or under a track, or when such work has disturbed or is likely to disturb a Railroad structure or the Railroad roadbed or surface and alignment of any track to such extent that the movement of trains must be controlled by flagging.

3. Normally, the Railroad will assign one flagman to a project; but in some cases, more than one may be necessary, such as yard limits where three (3) flagmen may be required. However, if the Contractor works within distances that violate instructions given by the Railroad’s authorized representative or performs work that has not been scheduled with the Railroad’s authorized representative, a flagman or flagmen may be required full time until the project has been completed.

4. For Projects exceeding 30 days of construction, Contractor shall provide the flagmen a small work area with a desk/counter and chair within the field/site trailer, including the use of bathroom facilities, where the flagman can check in/out with the Project, as well as to the flagman’s home terminal. The work area should provide access to two (2) electrical outlets for recharging radio(s), and a laptop computer; and have the ability to print off needed documentation and orders as needed at the field/site trailer. This should aid in maximizing the flagman’s time and efficiency on the Project.

B. Scheduling and Notification:

1. The Contractor’s work requiring Railroad flagging should be scheduled to limit the presence of a flagman at the site to a maximum of 50 hours per week. The Contractor shall receive Railroad approval of work schedules requiring a flagman’s presence in excess of 40 hours per week.

2. Not later than the time that approval is initially requested to begin work on Railroad right-of-way, Contractor shall furnish to the Railroad and the Sponsor a schedule for all work required to complete the portion of the project within Railroad right-of-way and arrange for a job site meeting between the Contractor, the Sponsor, and the Railroad’s authorized representative. Flagman or Flagmen may not be provided until the job site meeting has been conducted and the Contractor’s work scheduled.

3. The Contractor will be required to give the Railroad representative at least 10 working days of advance written notice of intent to begin work within Railroad right-of-way in accordance with this special provision. Once begun, when such work is then suspended at any time, or for any reason, the Contractor will be required to give the Railroad representative at least 3 working days of advance notice before resuming work on Railroad right-of-way. Such notices shall include sufficient details of the proposed work to enable the Railroad representative to determine if flagging will be required. If such notice is in writing, the Contractor shall furnish the Engineer a copy; if notice is given verbally, it shall be confirmed in writing with copy to the Engineer. If flagging is required, no work shall be undertaken until the flagman, or flagmen are present at the job site. It may take up to 30 days to obtain flagging initially from the Railroad. When flagging begins, the flagman is usually assigned by the Railroad to work at the project site on a continual basis until no longer
needed and cannot be called for on a spot basis. If flagging becomes unnecessary and is suspended, it may take up to 30 days to again obtain from the Railroad. Due to Railroad labor agreements, it is necessary to give 5 working days notice before flagging service may be discontinued and responsibility for payment stopped.

4. If, after the flagman is assigned to the project site, an emergency arises that requires the flagman’s presence elsewhere, then the Contractor shall delay work on Railroad right-of-way until such time as the flagman is again available. Any additional costs resulting from such delay shall be borne by the Contractor and not the Sponsor or Railroad.

C. Payment:

1. The Sponsor will be responsible for paying the Railroad directly for any and all costs of flagging which may be required to accomplish the construction.

2. The estimated cost of flagging is the current rate per day based on a 10-hour work day. This cost includes the base pay for the flagman, overhead, and includes a per diem charge for travel expenses, meals and lodging. The charge to the Sponsor by the Railroad will be the actual cost based on the rate of pay for the Railroad’s employees who are available for flagging service at the time the service is required.

3. Work by a flagman in excess of 8 hours per day or 40 hours per week, but not more than 12 hours a day will result in overtime pay at 1 and 1/2 times the appropriate rate. Work by a flagman in excess of 12 hours per day will result in overtime at 2 times the appropriate rate. If work is performed on a holiday, the flagging rate is 2 and 1/2 times the normal rate.

4. Railroad work involved in preparing and handling bills will also be charged to the Sponsor. Charges to the Sponsor by the Railroad shall be in accordance with applicable provisions of Subchapter B, Part 140, Subpart I and Subchapter G, Part 646, Subpart B of the Federal-Aid Policy Guide issued by the Federal Highway Administration on December 9, 1991, including all current amendments. Flagging costs are subject to change. The above estimates of flagging costs are provided for information only and are not binding in any way.

D. Verification:

1. Railroad’s flagman will electronically enter flagging time via Railroad’s electronic billing system. Any complaints concerning flagging must be resolved in a timely manner. If the need for flagging is questioned, please contact the Railroad Engineer. All verbal complaints will be confirmed in writing by the Contractor within 5 working days with a copy to the Sponsor’s Engineer. Address all written correspondence electronically to Railroad Engineer.

2. The Railroad flagman assigned to the project will be responsible for notifying the Sponsor Engineer upon arrival at the job site on the first day (or as soon thereafter as possible) that flagging services begin and on the last day that he performs such services for each separate period that services are provided. The Sponsor’s Engineer will document such notification in the project records. When requested, the Sponsor’s Engineer will also sign the flagman’s diary showing daily time spent and activity at the project site.
8. HAUL ACROSS RAILROAD TRACK:

   A. Where the plans show or imply that materials of any nature must be hauled across Railroad’s track, unless the plans clearly show that the Sponsor has included arrangements for such haul in its agreement with the Railroad, the Contractor will be required to make all necessary arrangements with the Railroad regarding means of transporting such materials across the Railroad’s track. The Contractor or Sponsor will be required to bear all costs incidental to such crossings whether services are performed by his own forces or by Railroad personnel.

   B. No crossing may be established for use of the Contractor for transporting materials or equipment across the tracks of the Railroad unless specific authority for its installation, maintenance, necessary watching and flagging thereof and removal, until a temporary private crossing agreement has been executed between the Contractor and Railroad. The approval process for an agreement normally takes 90 days.

9. WORK FOR THE BENEFIT OF THE CONTRACTOR:

   A. All temporary or permanent changes in wire lines or other facilities which are considered necessary to the project are shown on the plans; included in the force account agreement between the Sponsor and the Railroad or will be covered by appropriate revisions to same which will be initiated and approved by the Sponsor and/or the Railroad.

   B. Should the Contractor desire any changes in addition to the above, then he shall make separate arrangements with the Railroad for same to be accomplished at the Contractor’s expense.

10. COOPERATION AND DELAYS:

   A. It shall be the Contractor’s responsibility to arrange a schedule with the Railroad for accomplishing stage construction involving work by the Railroad or tenants of the Railroad. In arranging his schedule he shall ascertain, from the Railroad, the lead time required for assembling crews and materials and shall make due allowance therefore.

   B. No charge or claim of the Contractor against either the Sponsor or the Railroad will be allowed for hindrance or delay on account of railroad traffic; any work done by the Railroad or other delay incident to or necessary for safe maintenance of railroad traffic or for any delays due to compliance with these special provisions.

11. TRAINMAN’S WALKWAYS:

   A. Along the outer side of each exterior track of multiple operated track, and on each side of single operated track, an unobstructed continuous space suitable for trainman’s use in walking along trains, extending to a line not less than 10 feet from centerline of track, shall be maintained. Any temporary impediments to walkways and track drainage encroachments or obstructions allowed during work hours while Railroad’s protective service is provided shall be removed before the close of each work day. If there is any excavation near the walkway, a handrail, with 10’-0” minimum clearance from centerline of track, shall be placed and must conform to AREMA and/or FRA standards.

12. GUIDELINES FOR PERSONNEL ON RAILROAD RIGHT-OF-WAY:

   A. The Contractor and/or the Sponsor’s personnel authorized to perform work on Railroad’s property as specified in Section 2 above are not required to complete Norfolk Southern Roadway
EXHIBIT B

Worker Protection Training; However the Contractor and the Sponsor’s personnel must be familiar with Norfolk Southern’s standard operating rules and guidelines, should conduct themselves accordingly, and may be removed from the property for failure to follow these guidelines.

B. All persons shall wear hard hats. Appropriate eye and hearing protection must be used. Working in shorts is prohibited. Shirts must cover shoulders, back and abdomen. Working in tennis or jogging shoes, sandals, boots with high heels, cowboy and other slip-on type boots is prohibited. Hard-sole, lace-up footwear, zippered boots or boots cinched up with straps which fit snugly about the ankle are adequate. Wearing of safety boots is strongly recommended. In the vicinity of at-grade crossings, it is strongly recommended that reflective vests be worn.

C. No one is allowed within 25’ of the centerline of track without specific authorization from the flagman.

D. All persons working near track while train is passing are to lookout for dragging bands, chains and protruding or shifted cargo.

E. No one is allowed to cross tracks without specific authorization from the flagman.

F. All welders and cutting torches working within 25’ of track must stop when train is passing.

G. No steel tape or chain will be allowed to cross or touch rails without permission from the Railroad.

13. GUIDELINES FOR EQUIPMENT ON RAILROAD RIGHT-OF-WAY:

A. No crane or boom equipment will be allowed to set up to work or park within boom distance plus 15’ of centerline of track without specific permission from Railroad official and flagman.

B. No crane or boom equipment will be allowed to foul track or lift a load over the track without flag protection and track time.

C. All employees will stay with their machines when crane or boom equipment is pointed toward track.

D. All cranes and boom equipment under load will stop work while train is passing (including pile driving).

E. Swinging loads must be secured to prevent movement while train is passing.

F. No loads will be suspended above a moving train.

G. No equipment will be allowed within 25’ of centerline of track without specific authorization of the flagman.

H. Trucks, tractors or any equipment will not touch ballast line without specific permission from Railroad official and flagman. Orange construction fencing may be required as directed.

I. No equipment or load movement within 25’ or above a standing train or Railroad equipment without specific authorization of the flagman.
J. All operating equipment within 25’ of track must halt operations when a train is passing. All other operating equipment may be halted by the flagman if the flagman views the operation to be dangerous to the passing train.

K. All equipment, loads and cables are prohibited from touching rails.

L. While clearing and grubbing, no vegetation will be removed from Railroad embankment with heavy equipment without specific permission from the Railroad Engineer and flagman.

M. No equipment or materials will be parked or stored on Railroad’s property unless specific authorization is granted from the Railroad Engineer.

N. All unattended equipment that is left parked on Railroad property shall be effectively immobilized so that it cannot be moved by unauthorized persons.

O. All cranes and boom equipment will be turned away from track after each work day or whenever unattended by an operator.

P. Prior to performing any crane operations, the Contractor shall establish a single point of contact for the Railroad flagman to remain in communication with at all times. Person must also be in direct contact with the individual(s) directing the crane operation(s).

14. INSURANCE:

A. In addition to any other forms of insurance or bonds required under the terms of the contract and specifications, the Prime Contractor will be required to carry insurance of the following kinds and amounts:

   1. a. Commercial General Liability Insurance having a combined single limit of not less than $2,000,000 per occurrence for all loss, damage, cost and expense, including attorneys’ fees, arising out of bodily injury liability and property damage liability during the policy period. Said policy shall include explosion, collapse, and underground hazard (XCU) coverage, shall be endorsed to name Railroad specified in item A.2.c. below both as the certificate holder and as an additional insured, and shall include a severability of interests provision.

       b. Automobile Liability Insurance with a combined single limit of not less than $1,000,000 each occurrence for injury to or death of persons and damage to or loss or destruction of property. Said policy or policies shall be endorsed to name Railroad specified in item A.2.c. below both as the certificate holder and as an additional insured and shall include a severability of interests provision.

   2. Railroad Protective Liability Insurance having a combined single limit of not less than $2,000,000 each occurrence and $6,000,000 in the aggregate applying separately to each annual period. If the project involves track over which passenger trains operate, the insurance limits required are not less than a combined single limit of $5,000,000 each occurrence and $10,000,000 in the aggregate applying separately to each annual period. Said policy shall provide coverage for all loss, damage or expense arising from bodily injury and property damage liability, and physical damage to property attributed to acts or omissions at the job site.
The standards for the Railroad Protective Liability Insurance are as follows:

a. The insurer must be rated A- or better by A.M. Best Company, Inc.
   **NOTE:** NS does not accept from insurers Chartis (AIG or Affiliated Company including Lexington Insurance Company), Hudson Group or Liberty or Affiliated Company, American Contractors Insurance Company and Erie Insurance Company including Erie Insurance Exchange and Erie Indemnity Company.

b. The policy must be written using one of the following combinations of Insurance Services Office ("ISO") Railroad Protective Liability Insurance Form Numbers:
   (1) CG 00 35 01 96 and CG 28 31 10 93; or
   (2) CG 00 35 07 98 and CG 28 31 07 98; or
   (3) CG 00 35 10 01; or
   (4) CG 00 35 12 04; or
   (5) CG 00 35 12 07; or
   (6) CG 00 35 04 13.

c. The named insured shall read:

   Norfolk Southern Corporation and its subsidiaries
   Three Commercial Place
   Norfolk, Virginia 23510-2191
   Attn: Risk Manager

   **(NOTE: Railroad does not share coverage on RRPL with any other entity on this policy)**

d. The description of operations must appear on the Declarations, must match the project description in this agreement, and must include the appropriate Sponsor project and contract identification numbers.

e. The job location must appear on the Declarations and must include the city, state, and appropriate highway name/number. **NOTE: Do not include any references to milepost, valuation station, or mile marker on the insurance policy.**

f. The name and address of the prime Contractor must appear on the Declarations.

g. The name and address of the Sponsor must be identified on the Declarations as the "Involved Governmental Authority or Other Contracting Party."

h. Endorsements/forms that **required** are:
   (1) Physical Damage to Property Amendment
   (2) Terrorism Risk Insurance Act (TRIA) coverage must be included

i. Other endorsements/forms that will be accepted are:
(1) Broad Form Nuclear Exclusion – Form IL 00 21
(2) 30-day Advance Notice of Non-renewal or cancellation
(3) Required State Cancellation Endorsement
(4) Quick Reference or Index Form CL/IL 240

j. Endorsements/forms that are NOT acceptable are:
   (1) Any Pollution Exclusion Endorsement except CG 28 31
   (2) Any Punitive or Exemplary Damages Exclusion
   (3) Known Injury or Damage Exclusion form CG 00 59
   (4) Any Common Policy Conditions form
   (5) An Endorsement that limits or excludes Professional Liability coverage
   (6) A Non-Cumulation of Liability or Pyramiding of Limits Endorsement
   (7) An Endorsement that excludes TRIA coverage
   (8) A Sole Agent Endorsement
   (9) Any type of deductible endorsement or amendment
   (10) Any other endorsement/form not specifically authorized in item no. 2.h above.

B. If any part of the work is sublet, similar insurance, and evidence thereof as specified in A.1 above, shall be provided by or on behalf of the subcontractor to cover its operations on Railroad’s right of way.

C. All insurance required under the preceding subsection A shall be underwritten by insurers and be of such form and content, as may be acceptable to the Company. Prior to entry on Railroad right-of-way, the original Railroad Protective Liability Insurance Policy shall be submitted by the Prime Contractor to the Department at the address below for its review and transmittal to the Railroad. In addition, certificates of insurance evidencing the Prime Contractor’s and any subcontractors’ Commercial General Liability Insurance shall be issued to the Railroad and the Department at the addresses below, and forwarded to the Department for its review and transmittal to the Railroad. The certificates of insurance shall state that the insurance coverage will not be suspended, voided, canceled, or reduced in coverage or limits without (30) days advance written notice to Railroad and the Department. No work will be permitted by Railroad on its right-of-way until it has reviewed and approved the evidence of insurance required herein.

SPONSOR: RAILROAD:
Risk Management
Norfolk Southern Railway Company
Three Commercial Place
Norfolk, Virginia 23510-2191

D. The insurance required herein shall in no way serve to limit the liability of Sponsor or its Contractors under the terms of this agreement.

E. Insurance Submission Procedures

1. Railroad will only accept initial insurance submissions via US Mail or Overnight carrier to the address noted in C above. Railroad will NOT accept initial insurance submissions via email or faxes. Please provide point of contact information with the submission including a phone number and email address.
2. Railroad requires the following two (2) forms of insurance in the initial insurance submission to be submitted under a cover letter providing details of the project and contact information:

   a. The full original or certified true countersigned copy of the railroad protective liability insurance policy in its entirely inclusive of all declarations, schedule of forms and endorsements along with the policy forms and endorsements.

   b. The Contractor’s commercial general, automobile, and workers’ compensation liability insurance certificate of liability insurance evidencing a combined single limit of a minimum of $2M per occurrence of general and $1M per occurrence of automobile liability insurance naming Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510 as the certificate holder and as an additional insured on both the general and automobile liability insurance policy.

3. It should be noted that the Railroad does not accept notation of Railroad Protective insurance on a certificate of liability insurance form or Binders as Railroad must have the full original countersigned policy. Further, please note that mere receipt of the policy is not the only issue but review for compliance. Due to the number of projects system-wide, it typically takes a minimum of 30-45 days for the Railroad to review.

15. FAILURE TO COMPLY:

   A. In the event the Contractor violates or fails to comply with any of the requirements of these Special Provisions:

      1. The Railroad Engineer may require that the Contractor vacate Railroad property.

      2. The Sponsor’s Engineer may withhold all monies due the Contractor on monthly statements.

   B. Any such orders shall remain in effect until the Contractor has remedied the situation to the satisfaction of the Railroad Engineer and the Sponsor’s Engineer.

16. PAYMENT FOR COST OF COMPLIANCE:

   A. No separate payment will be made for any extra cost incurred on account of compliance with these special provisions. All such costs shall be included in prices bid for other items of the work as specified in the payment items.

17. PROJECT INFORMATION

   A. Date: _______________________________ April 13, 2020
   B. NS File No.: ___________________________ BR0029706
   C. NS Milepost: __________________________ CJ-229.55
   D. Sponsor’s Project No.: __________________________
WHEREAS, ______________________________ (“Principal”) has requested that Norfolk Southern Railway Company (“Company”) permit Principal to be on or about Company’s premises and/or facilities at or in the vicinity of Company Milepost CJ-229.55, at or near Middletown, Butler County, Ohio (the “Premises”) for the sole purpose of replacing the deck of the existing University Boulevard overhead bridge structure (DOT#524681D), on behalf of the City of Middletown (the “Project Sponsor”) during the period ______________, 20____, to ________________, 20____ (the “Right of Entry”).

WHEREAS, Company is willing to grant the Right of Entry subject to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties hereby agree as follows.

Company hereby grants Principal the Right of Entry. The Right of Entry shall extend to Principal and to subcontractors and other entities affiliated with Principal who are specifically approved for entry by authorized representatives of Company in writing, as well as to the officers and employees of the foregoing (collectively “Licensees”). The Right of Entry shall apply to those portions of the Premises, and to such equipment, machinery, rolling stock and other personal property and fixtures belonging to Company or otherwise located on the Premises, only to the extent specifically designated and approved in writing by authorized representatives of Company (collectively, “Designated Property”).

Principal agrees:

(i) that Licensees’ access to the Premises shall be limited to the Designated Property and that Principal shall be liable and fully responsible for all actions of Licensees while on the Premises pursuant to the Right of Entry;

(ii) that Licensees shall (a) be subject to Company’s direction when upon the Premises, and (b) be subject to Company’s removal from the Premises, in Company’s sole discretion, due to negligence, misconduct, unsafe actions, breach of this agreement or the failure to act respectfully, responsibly, professionally, and/or in a manner consistent with Company’s desire to minimize risk and maintain its property with maximum security and minimum distractions or disruptions or for any other lawful reason;

(iii) that Licensees shall perform all work with such care, diligence and cooperation with Company personnel as to reasonably avoid accidents, damage or harm to persons or property and delays or interference with the operations of any Company’s facilities and in accordance with Company’s “Special Provisions for Protection of Railway Interest”, attached and incorporated herein.

(iv) to give Company’s officer signing this agreement, or his or her authorized representative, advance notification of the presence of Licensees on Designated Property in accordance with Company’s “Special Provisions for Protection of Railway Interest”;

(v) to indemnify and save harmless Company, its officers, agents and employees from and against any and all claims, demands, losses, suits, judgments, costs, expenses (including without limitation reasonable attorney’s fees) and liability resulting from (a) injury to or death of any person, including without limitation the Licensees, and damage to or loss of any property, including without limitation that belonging to or in the custody of Licensees (the “Licensee Property”), arising or in any manner growing out of the presence of either the Licensees or the Licensee Property, or both, on or about the Premises, regardless of
whether negligence on the part of Company, its officers, agents or employees caused or contributed to said loss of life, personal injury or property loss or damage in whole or in part; (b) any alleged violation of any law, statute, code, ordinance or regulation of the United States or of any state, county or municipal government (including, without limitation, those relating to air, water, noise, solid waste and other forms of environmental protection, contamination or pollution or to discrimination on any basis) that results in whole or in part, directly or indirectly, from the activities of Licensees related in any way to their presence on the Premises or from any other act or omission of Licensees contributing to such violation, regardless of whether such activities, acts or omissions are intentional or negligent, and regardless of any specification by Company without actual knowledge that it might violate any such law, statute, code, ordinance or regulation; (c) any allegation that Company is an employer or joint employer of a Licensee or is liable for related employment benefits or tax withholdings; or (d) any decision by Company to bar or exclude a Licensee from the Premises pursuant to subsection (ii)(b) above;

(vi) to have and keep in effect the appropriate kinds of insurance as listed in the Company’s “Special Provisions for Protection of Railway Interest, with insurance companies satisfactory to Company, during the entire time Licensees or Licensee Property, or both, is on the Premises: and to provide certificates of insurance showing the foregoing coverage, as well as any endorsements or other proper documentation showing and any change or cancellations in the coverage to the Company officer signing this agreement or to his or her authorized representative;

(vii) to reimburse Company for any costs not covered under the existing project agreement between the Company and the Project Sponsor, including any material, labor, supervisory and protective costs (including flagging) and related taxes and overhead expenses required or deemed necessary by Company because of the presence of either Licensees or Licensee Property on the Premises;

(viii) to exercise special care and precautions to protect the Premises and equipment, machinery, rolling stock and other personal property and fixtures belonging to Company or otherwise located on the Premises (whether or not constituting Designated Property) and to avoid interference with Company’s operations;

(ix) to not create and not allow drainage conditions which would be adverse to the Premises or any surrounding areas;

(x) to refrain from the disposal or release of any trash, waste, and hazardous, dangerous or toxic waste, materials or substances on or adjacent to the Premises and to clean up or to pay Company for the cleanup of any such released trash, waste, materials or substances; and

(xi) to restore the Premises and surrounding areas to its original condition or to a condition satisfactory to the Company officer signing this agreement or to his or her authorized representative (ordinary wear and tear to rolling stock and equipment excepted) upon termination of Licensees’ presence on the Premises.

As a part of the consideration hereof, Principal further hereby agrees that Company shall mean not only Norfolk Southern Railway Company but also Norfolk Southern Corporation and any and all subsidiaries and affiliates of Norfolk Southern Railway Company or Norfolk Southern Corporation, and that all of Principal’s indemnity commitments in this agreement in favor of Company also shall extend to and indemnify Norfolk Southern Corporation and any subsidiaries and affiliated companies of Norfolk Southern Railway Company or Norfolk Southern Corporation and its and/or their directors, officers, agents and employees.
It is expressly understood that the indemnification obligations set forth herein cover claims by Principal's employees, agents, independent contractors and other representatives, and Principal expressly waives any defense to or immunity from such indemnification obligations and/or any subrogation rights available under any applicable state constitutional provision, laws, rules or regulations, including, without limitation, the workers' compensation laws of any state. Specifically, (i) in the event that all or a portion of the Premises is located in the State of Ohio, the following provision shall be applicable: “Principal, with respect to the indemnification provisions contained herein, hereby expressly waives any defense or immunity granted or afforded it pursuant to Section 35, Article II of the Ohio Constitution and Section 4123.74 of the Ohio Revised Code”; and (ii) in the event that all or a portion of the Premises is located in the Commonwealth of Pennsylvania, the following provision shall be applicable: “Principal, with respect to the indemnification provisions contained herein, hereby expressly waives any defense or immunity granted or afforded it pursuant to the Pennsylvania Workers’ Compensation Act, 77 P.S. 481”.

This agreement shall be governed by the internal laws of the Commonwealth of Virginia, without regard to otherwise applicable principles of conflicts of laws. If any of the foregoing provisions is held for any reason to be unlawful or unenforceable, the parties intend that only the specific words found to be unlawful or unenforceable be severed and deleted from this agreement and that the balance of this agreement remain a binding enforceable agreement to the fullest extent permitted by law.

This agreement may be amended only in a writing signed by authorized representatives of the parties.

Name of Principal

By________________________________________  By________________________________________

Title _____________________________________  Title _____________________________________

Date __________________________, 20____  Date __________________________, 20____
FORC ACCOUNT ESTIMATE

Work to be Performed By: Norfolk Southern Railway Company
For the Account of: City of Middletown
Project Description: Proposed Deck Replacement of the University Blvd. Bridge over NS
Location: Middletown, Butler County, OH
Project No.: BUT-M0366-00990
Milepost: CJ-229.55
File: BR0029706
Date: April 13, 2020

<table>
<thead>
<tr>
<th>ITEM</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>ITEM A</td>
<td>Preliminary Engineering</td>
<td>0</td>
</tr>
<tr>
<td>ITEM B</td>
<td>Construction Engineering</td>
<td>53,529</td>
</tr>
<tr>
<td>ITEM C</td>
<td>Accounting</td>
<td>2,347</td>
</tr>
<tr>
<td>ITEM D</td>
<td>Railroad Protective Services</td>
<td>151,459</td>
</tr>
<tr>
<td>ITEM E</td>
<td>Communications Changes</td>
<td>0</td>
</tr>
<tr>
<td>ITEM F</td>
<td>Signal &amp; Electrical Changes</td>
<td>0</td>
</tr>
<tr>
<td>ITEM G</td>
<td>Track Work</td>
<td>0</td>
</tr>
<tr>
<td>ITEM H</td>
<td>T-Cubed</td>
<td>0</td>
</tr>
<tr>
<td><strong>GRAND TOTAL</strong></td>
<td></td>
<td><strong>$ 207,336</strong></td>
</tr>
</tbody>
</table>

ITEM A - Preliminary Engineering

(Review plans and special provisions, prepare estimates, etc.)

Labor: 0 Hours @ $60 / hour= 0
Labor Additives: 0
Travel Expenses: 0
Services by Contract Engineer: 0

NET TOTAL - ITEM A $ -

NET COMBINED TOTAL
ITEM B - Construction Engineering

(Coordinate Railway construction activities, review contractor submittals, etc.)

<table>
<thead>
<tr>
<th>Item</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Labor: 60 hours @ $60/hour</td>
<td>3,600</td>
</tr>
<tr>
<td>Labor Additives:</td>
<td>2,829</td>
</tr>
<tr>
<td>Travel Expenses:</td>
<td>2,500</td>
</tr>
<tr>
<td>Services by Contract Engineer:</td>
<td>44,600</td>
</tr>
<tr>
<td><strong>NET TOTAL - ITEM B</strong></td>
<td><strong>$ 53,529</strong></td>
</tr>
</tbody>
</table>

ITEM C - Administration

Agreement Construction, Review and/or Handling: 1,250
Accounting Hours (Labor): 20 hours @ $30/hour = 600
Accounting Additives: 497

**NET TOTAL - ITEM C** $ 2,347

ITEM D - Railroad Protective Services

(During construction on, over, under, or adjacent to the track.)

<table>
<thead>
<tr>
<th>Item</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Labor: Protective Services 120 days @ 390 per day</td>
<td>46,800</td>
</tr>
<tr>
<td>(based on working 12 hours/day)</td>
<td></td>
</tr>
<tr>
<td>Labor Additive:</td>
<td>86,959</td>
</tr>
<tr>
<td>Travel Expenses, Meals &amp; Lodging: 120 days @ $100/day</td>
<td>12,000</td>
</tr>
<tr>
<td>Rental Vehicle 6 months @ $950/month</td>
<td>5,700</td>
</tr>
<tr>
<td><strong>NET TOTAL - ITEM D</strong></td>
<td><strong>$151,459</strong></td>
</tr>
</tbody>
</table>

ITEM E - Communications Changes

Material: 0
Labor: 0
Purchase Services: 0
Subsistence: 0
Additive: 0

**NET TOTAL - ITEM E** $ -

NET COMBINED TOTAL

ITEM F - Signal & Electrical Changes

Material: 0
Labor: 0
Purchase Services: 0
Other: 0

NET TOTAL - ITEM F $ -
NET COMBINED TOTAL

ITEM G - Track Work

Material: 0
Labor: 0
Additive: 0
Purchase Services: 0

NET TOTAL - ITEM G $ -
NET COMBINED TOTAL

ITEM H - T-CUBED

Lump Sum $ -

NOTES

1. For all groups of CONTRACT employees, the composite labor surcharge rate used in this estimate (including insurance) is **185.81%**. Self Insurance - Public Liability Property Damage is estimated at **16.00%**. Work will be billed at actual current audited rate in effect at the time the services are performed.

2. For all groups of NON-CONTRACT employees, the composite labor surcharge rate used in this estimate (including insurance) is **78.59%**. Self Insurance - Public Liability Property Damage is estimated at **16.00%**. Work will be billed at actual current audited rate in effect at the time the services are performed.

3. All applicable salvage items due the Department will be made available to it at the jobsite for its disposal.

4. The Force Account Estimate is valid for one (1) year after the date of the estimate (04/13/2020). If the work is not performed within this time frame the Railway may revise the estimate to (1) include work not previously indicated as necessary and (2) reflect changes in cost to perform the force account work.
DATE: July 15, 2020

TO: James Palenick, City Manager

FROM: Scott Tadych, Public Works and Utilities Director
Prepared by Rob Nicolls, City Engineer

PURPOSE

Authorize the City Manager to enter into a construction agreement with Norfolk Southern railroad for the replacement of the bridge deck on the University Blvd. bridge over the Norfolk Southern railroad.

BACKGROUND AND FINDINGS

This construction agreement is between the City and Norfolk Southern to replace the bridge deck over the Norfolk Southern railroad since the work will take place over top of the railroad right of way. Construction is scheduled to start this summer and conclude in the fall of 2021.

FINANCIAL IMPACTS

This construction agreement includes $207,336 which covers Norfolk Southern’s costs associated with the project. These costs include construction engineering and railroad protective services. A further breakdown is included in the agreement. These fees will be billed as the project progresses.

The construction agreement will be funded by the General Capital Fund (220) $207,336 which needs appropriated.

EMERGENCY/NON EMERGENCY

Emergency. Second Reading emergency is requested in order to allow time for Norfolk Southern to execute the documents before the contractor begins construction.
ATTACHMENTS

Construction Agreement
Vicinity Map
LEGISLATION
ITEM 4
ORDINANCE NO. O2020-41

AN ORDINANCE AMENDING SECTION 209.06 (AUTHORITY OF THE CITY MANAGER; PURCHASES) OF THE CODIFIED ORDINANCES.

BE IT ORDAINED, by the City Council of the City of Middletown, Butler/Warren Counties, Ohio, that:

Section 1

Section 209.06 (Authority of the City Manager; Purchases) of the Codified Ordinances is hereby amended to include new paragraph (f) Cooperative Purchasing Programs, as set forth in full in Exhibit “A”, attached hereto. The remainder of Section 209.06 shall remain the same.

Section 2

This ordinance shall be effective at the earliest time permitted by law.

Nicole Condrey, Mayor

1st Reading:___________
2nd Reading:___________
Adopted:___________
Effective:___________

Attest:____________________
Clerk of City Council

H:\Law\leg\2020 Leg\O Amend MCO Section 209.06
(f) Cooperative Purchasing Programs.

(1) The City Manager, through the City Purchasing Agent, is hereby authorized to make purchases using the following cooperative purchasing programs: Sourcewell, the National Cooperative Purchasing Alliance (NCPA) and NASPO ValuePoint (National Association of State Procurement Officials).

(2) The City Manager, through the City Purchasing Agent, is hereby authorized to make purchases for the City of commodities or items costing less than twenty-five thousand dollars ($25,000.00), through the programs named in paragraph (1) above, provided that funds for such purchases have been properly appropriated.

(3) The City Manager, through the City Purchasing Agent, is hereby authorized to make purchases for the City of commodities or items costing twenty-five thousand dollars ($25,000.00) or more, through the programs named in paragraph (1) above, provided that:

A. The competitive bidding procedures of the organizations have been used in such purchases;

B. Funds for such purchases have been properly appropriated; and

C. The City Council approves the final purchase price of each such purchase on its consent agenda or by separate motion.
July 14, 2020

TO: Jim Palenick, City Manager
FROM: Samantha Zimmerman, Purchasing Agent

PURPOSE
To modify Section 209.06 of the City’s Codified Ordinances: Authority of the City Manager; purchases to include Sourcewell, National Cooperative Purchasing Alliance (NCPA), and NASPO ValuePoint (National Association of State Procurement Officials).

BACKGROUND and FINDINGS
Section 209.06 of the City’s Codified Ordinances authorizes the City Manager to enter into contracts for various types of purchases. These purchases include purchases through cooperative purchasing programs such as Southwest Ohio Purchasers for Government Association (SWOP4G), Ohio Department of Administration Services (ODAS), and Ohio Department of Transportation (ODOT).

The City currently uses other cooperative purchasing programs, such as Sourcewell, National Cooperative Purchasing Alliance (NCPA), and NASPO ValuePoint (National Association of State Procurement Officials) in addition to those listed above, in order to obtain lower pricing as well as save time.

Currently, when using Sourcewell, NCPA, and NASPO the purchases have to go through the legislative agenda delaying the purchase. If added to Section 209.06 of the City’s Codified Ordinances, this would bring these purchases to the Consent or Motion Agendas, speeding up the purchasing process.

ALTERNATIVES
1. Add only one of the three recommended changes.
2. Add only two of the three recommended changes
3. Do not make the recommended changes.

FINANCIAL IMPACT
N/A

EMERGENCY/NON-EMERGENCY
Non-emergency

cc: Jacob Burton, Finance Director
    Susan Cohen, Administrative Services Director
    Julie Owsley, Paralegal
LEGISLATION
ITEM 5
ORDINANCE NO. O2020-42

AN ORDINANCE ESTABLISHING A PROCEDURE FOR AND AUTHORIZING A CONTRACT WITH MILLER PIPELINE, LLC FOR THE 2020 SANITARY SEWER LINING PROJECT AND DECLARING AN EMERGENCY.

WHEREAS, the City sought proposals for the lining of defective sanitary sewer mains on various streets; and

WHEREAS, six contractors submitted proposals for the project and Miller Pipeline, LLC submitted the lowest and best proposal in the amount of $335,284.55; and

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Middletown, Butler/Warren Counties, Ohio that:

Section 1

The City Manager, without complying with the procedures of Chapter 735 of the Ohio Revised Code, is authorized to enter into a contract with Miller Pipeline, LLC for the 2020 Sanitary Sewer Lining Project in accordance with the pricing proposal attached hereto as Exhibit A. The contract shall be in a form acceptable to the Law Director and City Manager.

Section 2

The Finance Director is hereby authorized and directed to pay a sum not to exceed $335,284.55 from the Sewer Capital Reserve Fund (Fund # 495).

Section 3

City Council hereby determines that the procedure to be followed in the award and execution of the aforesaid contract shall consist solely of the procedure set forth in this ordinance and the provisions of Chapter 735 of the Ohio Revised Code shall not be applicable to the award and execution of the aforesaid contract.

Section 4

This ordinance is declared to be an emergency measure necessary for the immediate preservation of the public health, safety and general welfare, to wit: in order to get the work started during this construction season, and shall be in full force and effect from the date of its adoption.

Nicole Condrey, Mayor
<table>
<thead>
<tr>
<th>Street</th>
<th>Section</th>
<th>ESTIMATED</th>
<th>SIZE</th>
<th>UNIT PRICE</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Avalon</td>
<td>1401 to Germantown</td>
<td>263.00</td>
<td>8.00</td>
<td>$23.20</td>
<td>$6,101.60</td>
</tr>
<tr>
<td>Van</td>
<td>Elsmere to Alley near</td>
<td>165.00</td>
<td>8.00</td>
<td>$29.60</td>
<td>$4,884.00</td>
</tr>
<tr>
<td>Auburn</td>
<td>1006 to Tytus</td>
<td>207.00</td>
<td>12.00</td>
<td>$32.50</td>
<td>$6,727.50</td>
</tr>
<tr>
<td>Crescent</td>
<td>2102 to Auburn</td>
<td>130.00</td>
<td>12.00</td>
<td>$40.85</td>
<td>$5,310.50</td>
</tr>
<tr>
<td>Elwood</td>
<td>Wilbraham to Erie</td>
<td>414.00</td>
<td>12.00</td>
<td>$25.40</td>
<td>$10,515.60</td>
</tr>
<tr>
<td>Erie</td>
<td>Elwood to Wrenn</td>
<td>362.00</td>
<td>12.00</td>
<td>$26.45</td>
<td>$9,574.90</td>
</tr>
<tr>
<td>Germantown</td>
<td>Wilbraham to Verity</td>
<td>1,080.00</td>
<td>12.00</td>
<td>$26.50</td>
<td>$28,620.00</td>
</tr>
<tr>
<td>Goldman</td>
<td>3005 to Carolina</td>
<td>1,242.00</td>
<td>12.00</td>
<td>$25.45</td>
<td>$31,608.90</td>
</tr>
<tr>
<td>Highland</td>
<td>1301 to 1601</td>
<td>947.00</td>
<td>12.00</td>
<td>$27.65</td>
<td>$26,184.55</td>
</tr>
<tr>
<td>Hughes</td>
<td>1008 to Tytus</td>
<td>198.00</td>
<td>12.00</td>
<td>$33.15</td>
<td>$6,563.70</td>
</tr>
<tr>
<td>Wilmore</td>
<td>Wilbraham to Erie</td>
<td>633.00</td>
<td>12.00</td>
<td>$27.60</td>
<td>$17,470.80</td>
</tr>
<tr>
<td>Yankee Rd.</td>
<td>Pershing to Oxford St.</td>
<td>3,257.00</td>
<td>15.00</td>
<td>$42.50</td>
<td>$138,422.50</td>
</tr>
<tr>
<td>Service Lateral</td>
<td></td>
<td>182</td>
<td>EA</td>
<td>$75.00</td>
<td>$13,650.00</td>
</tr>
<tr>
<td>Bond</td>
<td></td>
<td>1</td>
<td>LS</td>
<td>$1,900.00</td>
<td>$1,900.00</td>
</tr>
<tr>
<td>614 Maintaining Traffic</td>
<td>1</td>
<td>LS</td>
<td>$2,750.00</td>
<td>$2,750.00</td>
<td></td>
</tr>
<tr>
<td>Contingency</td>
<td></td>
<td>1</td>
<td>LS</td>
<td>$25,000.00</td>
<td>$25,000.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td><strong>TOTAL</strong></td>
</tr>
</tbody>
</table>
DATE      August 5, 2020
TO:        Jim Palenick, City Manager
FROM:      Scott Tadych, Public Works and Utilities Director
           Prepared by Rob Nicolls, City Engineer

2020 Sanitary Sewer Lining

PURPOSE
Authorize the City Manager to enter into a contract with Miller Pipeline LLC and waive the bidding procedure requirement.

BACKGROUND AND FINDINGS
The City is proposing to proceed with the 2020 Sanitary Sewer Lining project which consists of constructing a cured in place liner inside defective sanitary sewer mains on various streets.

Staff advertised a request for proposals and six contractors provided proposals to perform the work. Miller Pipeline LLC provided the best proposal.

ALTERNATIVES
Award the work to a different contractor and/or alter the scope of work.

FINANCIAL IMPACTS
The lowest and best proposal received for this project on July 29, 2020 was $335,284.55.

Staff recommends authorizing the award of a contract to Miller Pipeline LLC based on their proposal prices provided and not to exceed $335,284.55.

The project will be funded by the Sanitary Sewer Capital Fund (495). These funds are appropriated in the 2020 Capital Improvement budget.
EMERGENCY/NON EMERGENCY

Second Reading Emergency is requested in order to provide as much time as possible for the contractor to perform work this construction season.

ATTACHMENTS

Bid Tab
Vicinity Map
<table>
<thead>
<tr>
<th>Street</th>
<th>Section</th>
<th>ESTIMATED LENGTH (LF)</th>
<th>SIZE (IN)</th>
<th>MILLER PIPELINE UNIT PRICE</th>
<th>MILLER PIPELINE AMOUNT</th>
<th>UNITED SURVEY UNIT PRICE</th>
<th>UNITED SURVEY AMOUNT</th>
<th>GRANITE INLINER UNIT PRICE</th>
<th>GRANITE INLINER AMOUNT</th>
<th>INSIITUFORM TECHNOLOGIES UNIT PRICE</th>
<th>INSIITUFORM TECHNOLOGIES AMOUNT</th>
<th>INSIGHT PIPE CONTRACTING UNIT PRICE</th>
<th>INSIGHT PIPE CONTRACTING AMOUNT</th>
<th>INLAND WATERS POLLUTION CONTROL UNIT PRICE</th>
<th>INLAND WATERS POLLUTION CONTROL AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Avalon</td>
<td>1401 to Germantown</td>
<td>263.00</td>
<td>8.00</td>
<td>$23.20</td>
<td>$6,101.60</td>
<td>$27.00</td>
<td>$7,101.00</td>
<td>$34.00</td>
<td>$8,942.00</td>
<td>$32.00</td>
<td>$8,416.00</td>
<td>$25.00</td>
<td>$6,575.00</td>
<td>$38.00</td>
<td>$9,944.00</td>
</tr>
<tr>
<td>Van</td>
<td>Elmere to Alley near Auburn</td>
<td>165.00</td>
<td>8.00</td>
<td>$29.60</td>
<td>$4,884.00</td>
<td>$33.00</td>
<td>$5,445.00</td>
<td>$34.00</td>
<td>$5,610.00</td>
<td>$36.00</td>
<td>$5,940.00</td>
<td>$40.00</td>
<td>$6,600.00</td>
<td>$43.50</td>
<td>$7,177.50</td>
</tr>
<tr>
<td>Auburn</td>
<td>1006 to Tytus</td>
<td>207.00</td>
<td>12.00</td>
<td>$32.50</td>
<td>$6,727.50</td>
<td>$26.00</td>
<td>$5,382.00</td>
<td>$34.00</td>
<td>$7,038.00</td>
<td>$40.00</td>
<td>$8,280.00</td>
<td>$43.00</td>
<td>$8,901.00</td>
<td>$48.00</td>
<td>$9,936.00</td>
</tr>
<tr>
<td>Crescent</td>
<td>2102 to Auburn</td>
<td>130.00</td>
<td>12.00</td>
<td>$40.85</td>
<td>$5,310.50</td>
<td>$44.00</td>
<td>$5,720.00</td>
<td>$34.00</td>
<td>$4,420.00</td>
<td>$32.00</td>
<td>$8,416.00</td>
<td>$38.00</td>
<td>$9,944.00</td>
<td>$34.00</td>
<td>$9,936.00</td>
</tr>
<tr>
<td>Elwood</td>
<td>Wilbraham to Erie</td>
<td>414.00</td>
<td>12.00</td>
<td>$25.40</td>
<td>$10,515.60</td>
<td>$30.00</td>
<td>$12,420.00</td>
<td>$34.00</td>
<td>$14,076.00</td>
<td>$31.00</td>
<td>$12,834.00</td>
<td>$40.00</td>
<td>$16,560.00</td>
<td>$47.50</td>
<td>$19,665.00</td>
</tr>
<tr>
<td>Erie</td>
<td>Elwood to Wrenn</td>
<td>362.00</td>
<td>12.00</td>
<td>$26.45</td>
<td>$9,574.90</td>
<td>$32.00</td>
<td>$11,584.00</td>
<td>$34.00</td>
<td>$12,308.00</td>
<td>$32.00</td>
<td>$11,584.00</td>
<td>$47.00</td>
<td>$17,014.00</td>
<td>$46.50</td>
<td>$16,833.00</td>
</tr>
<tr>
<td>Germantown Rd</td>
<td>Wilbraham to Verity</td>
<td>1,080.00</td>
<td>12.00</td>
<td>$26.50</td>
<td>$28,620.00</td>
<td>$28.00</td>
<td>$30,240.00</td>
<td>$34.00</td>
<td>$36,720.00</td>
<td>$32.00</td>
<td>$34,500.00</td>
<td>$47.00</td>
<td>$50,760.00</td>
<td>$49.00</td>
<td>$52,290.00</td>
</tr>
<tr>
<td>Goldman</td>
<td>1305 to Carolina</td>
<td>1,242.00</td>
<td>12.00</td>
<td>$27.65</td>
<td>$26,184.55</td>
<td>$29.00</td>
<td>$27,463.00</td>
<td>$34.00</td>
<td>$32,198.00</td>
<td>$30.00</td>
<td>$28,410.00</td>
<td>$38.00</td>
<td>$35,986.00</td>
<td>$46.50</td>
<td>$44,035.50</td>
</tr>
<tr>
<td>Highland</td>
<td>1301 to 1601</td>
<td>947.00</td>
<td>12.00</td>
<td>$33.15</td>
<td>$31,608.90</td>
<td>$37.00</td>
<td>$33,534.00</td>
<td>$34.00</td>
<td>$42,228.00</td>
<td>$31.00</td>
<td>$38,502.00</td>
<td>$40.00</td>
<td>$49,680.00</td>
<td>$46.50</td>
<td>$57,753.00</td>
</tr>
<tr>
<td>Hughes</td>
<td>1008 to Tytus</td>
<td>198.00</td>
<td>12.00</td>
<td>$27.60</td>
<td>$17,470.80</td>
<td>$27.00</td>
<td>$17,091.00</td>
<td>$34.00</td>
<td>$21,522.00</td>
<td>$28.00</td>
<td>$17,724.00</td>
<td>$40.00</td>
<td>$25,320.00</td>
<td>$46.50</td>
<td>$29,434.50</td>
</tr>
<tr>
<td>Wilmire</td>
<td>Wilbraham to Erie</td>
<td>633.00</td>
<td>12.00</td>
<td>$27.60</td>
<td>$17,470.80</td>
<td>$27.00</td>
<td>$17,091.00</td>
<td>$34.00</td>
<td>$21,522.00</td>
<td>$28.00</td>
<td>$17,724.00</td>
<td>$40.00</td>
<td>$25,320.00</td>
<td>$46.50</td>
<td>$29,434.50</td>
</tr>
<tr>
<td>Yankee Rd.</td>
<td>Pershing to Oxford St.</td>
<td>3,257.00</td>
<td>15.00</td>
<td>$42.50</td>
<td>$138,422.50</td>
<td>$25.00</td>
<td>$113,995.00</td>
<td>$40.00</td>
<td>$130,280.00</td>
<td>$46.00</td>
<td>$149,822.00</td>
<td>$69.00</td>
<td>$24,733.00</td>
<td>$61.50</td>
<td>$203,035.50</td>
</tr>
<tr>
<td>Service Lateral Connects</td>
<td>182</td>
<td>EA</td>
<td>$75.00</td>
<td>$13,659.00</td>
<td>$215.00</td>
<td>$113,995.00</td>
<td>$40.00</td>
<td>$130,280.00</td>
<td>$46.00</td>
<td>$149,822.00</td>
<td>$69.00</td>
<td>$24,733.00</td>
<td>$61.50</td>
<td>$203,035.50</td>
<td></td>
</tr>
<tr>
<td>Bond</td>
<td>3 LS</td>
<td>$1,900.00</td>
<td></td>
<td>$1,900.00</td>
<td>$215.00</td>
<td>$39,130.00</td>
<td>$200.00</td>
<td>$40,990.00</td>
<td>$100.00</td>
<td>$25,320.00</td>
<td>$111,765.00</td>
<td>$25,000.00</td>
<td>$15,106.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>614 Maintaining Traffic</td>
<td>1 LS</td>
<td>$2,750.00</td>
<td>$2,750.00</td>
<td>$6,800.00</td>
<td>$6,800.00</td>
<td>$1,000.00</td>
<td>$1,000.00</td>
<td>$9,200.00</td>
<td>$9,200.00</td>
<td>$9,000.00</td>
<td>$9,000.00</td>
<td>$52,941.00</td>
<td>$52,941.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contingency</td>
<td>1 LS</td>
<td>$25,000.00</td>
<td></td>
<td>$25,000.00</td>
<td>$25,000.00</td>
<td>$25,000.00</td>
<td>$25,000.00</td>
<td>$25,000.00</td>
<td>$25,000.00</td>
<td>$25,000.00</td>
<td>$6,548.50</td>
<td>$6,548.50</td>
<td>$6,548.50</td>
<td>$6,548.50</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>TOTAL</td>
<td>$335,284.55</td>
<td></td>
<td>$335,284.55</td>
<td>$357,025.00</td>
<td>$384,474.00</td>
<td>$406,350.00</td>
<td>$510,445.00</td>
<td>$576,065.00</td>
<td>$576,065.00</td>
<td>$576,065.00</td>
<td>$576,065.00</td>
<td>$576,065.00</td>
<td>$576,065.00</td>
<td></td>
</tr>
</tbody>
</table>
EXECUTIVE SESSION